138-5

138-5-14

TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1890.

No. 157.

JOSEPH T. WILLIAMS, APPELLANT,

vs.

THE UNITED STATES.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF NEVADA.

FILED OCTOBER 8, 1887.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1890.

No. 157.

JOSEPH T. WILLIAMS, APPELLANT,

vs.

THE UNITED STATES.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF NEVADA.

INDEX.

	Original.	Print.
Caption	*a*	1
Bill of complaint	1	1
Exhibit A—Contract of State of Nevada with J. T. Williams, February 2, 1884	15	6
Subpœna	18	7
Acceptance of service of subpœna	19	8
Stipulation as to appearance for defendant and time to plead	20	8
Stipulation as to appearance for defendant and time to plead	21	9
Demurrer to bill	22	9
Notice of pendency of action	31	13
Answer	33	14
Exceptions to answer	41	17
Order overruling exceptions to answer	55	22
Replication	56	22
Stipulation as to taking testimony in Nevada	58	23
Stipulation as to taking testimony in Washington	60	24
Order appointing examiner in Washington	62	25
Affidavit for extension of time to take testimony for complainant	63	25
Order extending time to take testimony for complainant	65	26
Affidavit for extension of time to take testimony for defendant	66	26
Order extending time to take testimony for defendant	69	27
Amended bill	70	28
Exhibit A—Contract of State of Nevada with J. T. Williams, February 2, 1884	90	38

JUDD & DETWEILER, PRINTERS, WASHINGTON, D. C., AUGUST 19, 1890.

	Original.	Print.
Order extending time to take testimony for defendant	93	39
Order extending time to take testimony for complainant	94	39
Notice of motion for leave to amend answer	95	40
Final decree	96	40
Proof of service of copy of decree on surveyor general	100	42
Memorandum of plaintiff's costs	101	42
Order continuing hearing on demurrer	103	43
Order taking demurrer under advisement	103	44
Order overruling demurrer, &c.	103	44
Order appointing examiner to take testimony in Nevada	104	44
Order granting leave to temporarily withdraw bill of complaint	104	44
Order granting leave to file amended bill	104	44
Order that answer stand as answer to amended bill	105	45
Order to serve proposed amendments to answer	105	45
Order overruling motion to amend answer	106	45
Order to publish testimony, &c.	106	45
Order entering name of A. E. Cheney as associate counsel for complainant	106	45
Order setting cause for trial	107	46
Order entering name of R. M. Clarke as associate counsel for defendant	107	46
Order continuing trial	107	46
Order taking cause under advisement	107	46
Order for decree	107	46
Order allowing appeal, &c.	108	46
Order entering appearance of T. W. Healy as solicitor for defendant	109	47
Order setting exceptions to answer for hearing	109	47
Enrollment of decree	110	47
Evidence for complainant taken at Washington, D. C.	117	50
Examiner's statement	117	50
Exhibit offered	118	50
Testimony of Henry Howes	119	51
James J. Barnes	153	75
Joseph Tyssowski	166	85
Duane E. Fox	179	93
Wm. W. Curtis	187	99
Lebbeus B. Ward	194	103
S. S. Burdett	220	122
Frank A. Law	221	122
Exhibits offered	222	123
Examiner's certificate	225	124
Exhibit A—Certificate Commissioner General Land Office, January 7, 1886	227	125
List No. 2, Eureka district, Nevada	228*a*	126
Letter Commissioner to Curtis & Burdett, February 21, 1883	229	127
Letter Commissioner to register and receiver, Eureka, Nevada, August 28, 1883	232	128
Letter register, Eureka, Nevada, to Commissioner, September 26, 1883	233	128
Telegram Commissioner to Governor of Nevada, December 11, 1883	233	129
Letter Governor of Nevada to Secretary of Interior, December 18, 1883	235	129

	Original.	Print.
Exhibit A—Letter Curtis & Burdett to Commissioner, December 20, 1883	236	129
Letter Commissioner to land agent for Nevada, December 29, 1883	238	130
Letter land agent for Nevada to Commissioner, December 31, 1883	239	130
Exhibit B—List No 24, Eureka, Nevada	241	131
C—Letter Curtis & Burdett to Commissioner, April 4, 1883	242	132
Protest for Matthiessen and Ward	242	132
Argument for Matthiessen and Ward	247	134
Exhibit A—Letter Gluyas to Hinckley, April 11, 1882	274	141
B—Letter Gluyas to Hinckley, July 25, 1882	275	142
C—Letter Hinckley to Gluyas, Aug. 3, 1882	276	142
Exhibit D—Letter register, Eureka, Nevada, to Commissioner, January 10, 1883	278	142
Application of R. Gluyas for patent, &c.	281	144
Deed Williams to New Philadelphia Silver Mining Company, July 26, 1879	285	146
Deed New Philadelphia Silver Mining Company to Stanton, receiver, April 15, 1881	287	146
Sheriff's certificate to Ward, July 12, 1881	289	147
Sheriff's certificate to Ward, August 22, 1881	290	147
Deed Stanton, receiver, to Matthiessen and Ward, September 16, 1881	291	148
Deed Ward to Matthiessen, December 2, 1882	292	148
Power of attorney Matthiessen and Ward to Gluyas, December 2, 1882	293	148
Field-notes of United States survey No. 37	295	150
Non-mineral affidavit of R. Gluyas	297	151
Non-mineral affidavit of Hanson & Tatton	299	152
Proof of posting notice and diagram of claim	301	152
Notice for publication in newspaper	304	154
Agreement of publisher	306	155
Affidavit of Wren & Cheney	307	155
Plat of claim	309	156
Exhibit E—Appearance of E. C. Ford for claimant	310	156
F—Letter Commissioner to Curtis & Burdett, September 4, 1883	311	157
G—Letter Commissioner to Curtis & Burdett, October 18, 1883	312	157
H—Affidavit of Matthiessen as to citizenship	313	158
Affidavit of Ward as to citizenship	314	158
Appearance of Curtis & Burdett	314	159
Exhibit I—United States mining laws and regulations thereunder	316	160
Circular General Land Office, April 27, 1880	347	195
Circular General Land Office, September 23, 1880	349	197
Circular General Land Office, May 9, 1882	351	197
Circular General Land Office, September 22, 1882	354	198
Circular General Land Office, December 9, 1882	356	200
Circular General Land Office, December 16, 1882	357	200

	Original.	Print.
Exhibit K—Letter Commissioner to Secretary Interior, January 19, 1884	361	202
Circular General Land Office, October 26, 1880	367	205
L—Letter Curtis & Burdett to Commissioner, September 6, 1882	371	207
M—Letter Curtis & Burdett to Abbett & Fuller, Feb'y 24	379	209
N—Letter L. B. Ward to Curtis & Burdett, Aug. 22, 1883	381	210
Letter W. W. Curtis to L. B. Ward, Aug. 23	381	210
O—Letter Leon Abbett to Commissioner, Feb'y 21, 1882	385	211
Deed New Phila. S. M. Co. to Stanton, receiver, April 15, 1881	389	213
Deed Joslyn *et al.* to Trowbridge, June 23, 1879	408	220
Deed Trowbridge to New Phila. S. M. Co., August 19, 1879	412	222
Deed Williams to New Phila. S. M. Co., July 26, 1879	415	223
Agreement Williams *et ux.* and Joslyn, Ap'l 13, 1876	420	225
Bond Williams *et ux.* and Joslyn, April 13, 1876	422	226
Deed Ernst to Williams, May 20, 1880	426	228
Deed Stanton, receiver, to Matthiessen and Ward, September 16, 1881	429	229
Exhibit P—Letter Commissioner to S. S. Burdett, February 25, 1886	471	247
Q—Letter H. B. Stanton, receiver, to Commissioner, June 20, 1881	474	248
R—Letter Commissioner to Leon Abbett, March 9, 1882	477	249
S—Letter Commissioner to L. B. Ward, May 23, 1882	482	251
T—Letter Commissioner to H. B. Stanton, April 14, 1882	483	252
V—Letter Commissioner to register, Eureka, Nevada, September 11, 1882	485	252
W—Letter Commissioner to Curtis & Burdett, February 21, 1883	488	254
Evidence for defendant taken at Washington, D. C.	492	255
Examiner's statement	492	255
Testimony of Ellery C. Ford	493	256
Wm. W. Curtis	513	268
Examiner's certificate	541	287
Evidence for complainant in rebuttal taken at Washington, D. C.	542	287
Examiner's statement	542	287
Testimony of John A. Hirth	543	287
Examiner's certificate	546	289
Defendant's Exhibit A (Washington)—Answer of E. C. Ford to argument of Curtis & Burdett, filed May 7, 1881	547	290
Memorandum by E. C. Ford	553	292
Evidence for complainant taken in Nevada	554	292
Testimony of J. W. Adams	554	292
Exhibit No. 1—Telegram Secretary Interior to Governor Adams, December 17, 1883	556	293
No. 2—Telegram Commissioner to Governor Adams, December 11, 1883	556	293
No. 3—Telegram Governor Adams to Commissioner, December 13, 1883	557	294

	Original.	Print.
Exhibit No. 4—Telegram Secretary Interior to Governor Adams, December 14, 1883	558	295
No. 5—Telegram Williams to Governor Adams, December 14, 1883	558	295
No. 6—Telegram Governor Adams to Secretary Interior, December 15, 1883	559	295
No. 7—Telegram Governor Adams to Williams, December 15, 1883	559	297
No. 8—Telegram Governor Adams to Secretary Interior, December 16, 1883	560	298
No. 9—Letter G. W. Merrill to Governor Adams, December 31, 1883	561	298
No. 10—Letter William Garrard to Secretary Interior, July 3, 1884	564	299
Testimony of Richard Gluyas	566	300
Exhibit A—Sketch map showing claims	578	304
Testimony of C. S. Preble	580	305
Exhibit B—Telegram Preble to Hinckley, Dec. 15, 1883	581	305
C—Telegram Hinckley to Preble, Dec. 15, 1883	582	306
D—Telegram Secretary Interior to Preble, December 15, 1883	582	307
E—Telegram Merrill to Preble, December 18, 1883	582	307
F—Telegram Merrill to Preble, December 19, 1883	583	307
G—Telegram Butler to Preble, December 17, 1883	583	307
I—Letter Merrill to Preble, December 19, 1883	584	308
J—Letter Merrill to Preble, January 13, 1884	588	309
K—Letter Merrill to Preble, January 28, 1884	589	310
H—Letter Butler to Preble, December 18, 1883	590	310
L—Application of J. T. Williams	595	312
M—Contract State of Nevada and Williams, February 2, 1884	598	313
N—Agreement State of Nevada and Williams, November 25, 1885	605	316
O—Certified copy of clear list No. 2	612	319
Testimony of Richard Gluyas (recalled)	614	320
Exhibit O[1]—Letter Gluyas to Hinckley, July 25, 1882	615	321
P—Letter Hinckley to Gluyas, August 3, 1882	616	321
Testimony of C. S. Preble (recalled)	625	325
Exhibit Q—Letter Preble to Hinckley, September 12, 1883	627	326
Testimony of W. T. Hanford	631	327
M. D. Noteware	632	328
Objections to Exhibit Q[1]	634	329
Exhibit Q[1]—Deed, Williams to New Philadelphia Silver Mining Company, July 26, 1879	636	329
R—Deed, Williams to Campbell, August 9, 1875	641	331
S—Deed, Campbell to Williams, November 15, 1875	645	333
T—Map	650	335
U—Map	651	335
V—Copy of amended complaint filed in circuit court United States, district of Nevada, in case of Matthiessen and Ward *vs.* Williams	652	336
W—Copy of demurrer to amended complaint filed in circuit court United States, district of Nevada, in case of Matthiessen and Ward *vs.* Williams	669	343

	Original.	Print.
X—Bond, Williams to Trowbridge	674	344
Extension of foregoing bond	676	345
Revocation of power of attorney, Trowbridge to Clayton	677	346
Agreement, Clayton and Smith, March 15, 1879	679	346
Deed, Stanton to Matthiessen and Ward, December 16, 1881	681	348
Option, Smith to New Philadelphia Silver Mining Company, March 15, 1879	683	349
Deed, Stanton to Matthiessen and Ward, September 16, 1881	684	349
Agreement, Trowbridge and Williams, June 9, 1879	686	350
Recorder's certificate	688	351
Exhibit Y—Notices of location	689	351
Z—Letter, Hinckley to Gluyas, May 16, 1886	696	354
A[1]—Newspaper items	697	355
B[1]—Agreement, Donohue and Williams *et ux.*, March 30, 1875	698	356
Evidence for defendant taken in Nevada	708	360
Exhibits offered	708	360
Testimony of Joseph T. Williams	709	361
Exhibit No. 4—Act of Legislature of Nevada to provide for the selection and sale of lands granted by the United States to the State, approved March 5, 1873	774	385
No. 5—Act of Legislature of Nevada fixing price of lands, &c., approved March 3, 1881	790	391
No. 6—Act of Legislature of Nevada supplementary to act of March 5, 1873, &c., approved March 7, 1881	792	392
No. 1—Bond, Williams to Trowbridge	796	393
Extension of foregoing bond	798	394
Agreement, Clayton and Smith, March 15, 1879	798	395
Agreement, Clayton and Smith, March 15, 1879	801	396
Agreement, Trowbridge and Williams, June 9, 1879	804	397
Recorder's certificate	807	398
No. 2—Option, Smith to New Philadelphia Silver Mining Company, March 15, 1879	808	398
Agreement, Clayton and Smith, March 15, 1879	809	399
Letter, Clayton to Williams, May 19, 1879	812	400
No. 3—Map of New Phila. S. M. Co. property	817	402
Report of New Phila. S. M. Co.	818	402
No. 7—Deed, Campbell to Williams, April 2, 1886	835	410
Evidence for complainant in rebuttal taken in Nevada	839	411
Testimony of Richard Gluyas	839	411
Examiner's certificate	885	428
Opinion	887	428
Appeal bond	911	437
Citation	914	438
Proof of service of citation	916	438
Petition of appeal	918	439
Clerk's certificate	930	443

a [Seal U. S. Circuit Court, Ninth Circuit, District of Nevada—T. J. Edwards, Clerk.]

In the Supreme Court of the United States.

JOSEPH T. WILLIAMS, Appellant,
v.
THE UNITED STATES, Appellee.

On appeal from final decree U. S. circuit court, 9th circuit and district of Nevada.

T. W. Healy, R. M. Clarke, and H. K. Mitchell, sol'rs for Williams.

Attorney General A. H. Garland and U. S. Attorney Trenmor Coffin, sol'rs for the United States.

James D. Torreyson, Curtis & Burdett, and Abbett & Fuller, of counsel.

1 *Bill of Complaint.*

In the Circuit Court of the United States, Ninth Circuit and District of Nevada.

THE UNITED STATES OF AMERICA, Plaintiff,
v.
JOSEPH T. WILLIAMS, Defendant.

To the judges of the circuit court of the United States, ninth circuit and district of Nevada:

The United States of America, by Benjamin Harris Brewster, Attorney General of the United States, and T. Coffin, attorney for the United States in and for the district of Nevada, brings this bill against Joseph T. Williams, a citizen of the State of Nevada; and thereupon your orator complains and says that on or about September 2, A. D. 1882, the State of Nevada, through its proper officers and agents, selected a list of lands to be approved to said State by plaintiff, acting through its proper officers and agents, under the
2 act of Congress of June 16, 1880, entitled "An act to grant the State of Nevada lands in lie- of the sixteenth and thirty-sixth section- in said State," and presented said list at the local land office of plaintiff at Eureka, Nevada.

That said list of lands selected by the State of Nevada was designated as list No. 24 and embraced, with other lands, the east half of the southeast quarter of section thirty-three and the west half of section thirty-four, of township number eight north, of range fifty east, in said district.

That on May 5th, 1883, the Secretary of the Interior of plaintiff, upon the certificate of the Commissioner of the General Land Office of plaintiff, at Washington, D. C., approved all of the lands embraced in said list No. 24 to the State of Nevada.

That said Commissioner of the General Land Office certified that the lands embraced in said list No. 24 were open to such selection and free from conflict with other claims, upon the belief that they were so open to selection and so free from conflict, but that said lands hereinbefore specifically described were not in fact
3 so open to selection by the State of Nevada and were not so free from conflict with other claims, and that said action of the Commissioner of the General Land Office of plaintiff was induced by the fraudulent action and erasure of records by some person whose name is unknown to plaintiff, acting in the interest of said Joseph T. Williams, defendant, as hereinafter set forth, and that by reason of said fraud said certification and approval of said lands to the State of Nevada were and are null and void.

That the facts and circumstances under which said lands were so certified and approved and the fraudulent acts which induced said certification are as follows, to wit: The said defendant, Joseph T. Williams, made desert-land entry No. 158 at the land office of plaintiff at Eureka, Nevada, in said district, on May 19th, 1879, embracing, among other tracts of land, the east half of the southeast quarter of section thirty-three and the west half of the southwest quarter of section thirty-four, of township eight north, of range fifty east, in said district.

4 On May 20th, 1882, said defendant, Williams, executed a written relinquishment of said desert-land entry, which relinquishment was filed in the local land office of plaintiff at Eureka, in said district, on June 9th, 1882, whereupon said desert-land entry was cancelled by an order of the Commissioner of the General Land Office of plaintiff, dated August 4th, 1882, and received by the register and receiver of plaintiff's local land office at Eureka on August 12th, 1882.

In October, 1882, the register and receiver of plaintiff's local land office at Eureka, Nevada, in the due course of the business of that office, transmitted said list of lands selected by the State of Nevada, being said list No. 24, under said act of Congress of June 16th, 1880, to plaintiff's General Land Office, at Washington, D. C.

On September 6th, A. D. 1882, F. O. Matthieson and L. B. Ward, acting by their attorneys, filed in the General Land Office of plaintiff, at Washington, D. C., an application for the reinstatement of said desert-land entry No. 158, together with a protest against
5 so much of the aforementioned selection of lands by the State of Nevada, list No. 24, as embraced the east half of the southeast quarter of section thirty-three and the west half of the southwest quarter of section thirty-four, of township eight north, of range fifty east, claiming to have derived an interest in said land by purchase from said defendant, Williams, through intermediate parties, and to have expended more than fifty thousand dollars in the erection of a stamp quartz mill thereon.

On January 8th, 1883, said Mathieson and Ward made an application, at the local land office of plaintiff at Eureka, Nevada, for a patent for a mill site on lands claimed by them within the tracts of land embraced in the said original desert-land entry No. 158 of

said defendant, Williams, and upon the lands herein specifically described. The register and receiver of plaintiff's local land office at Eureka, Nevada, rejected said application for a patent for a mill site for the reason that the land applied for—for such mill site—was embraced in said selection of the State of Nevada, said list
6 No. 24, filed in the land office at Eureka on September 2nd, 1882.

From the decision of said register and receiver rejecting said application for a patent for a mill site said Matthieson and Ward duly appealed according to law, on the same day upon which said decision was made, to the Commissioner of the General Land Office of the plaintiff, at Washington, D. C., and said application for a patent for a mill site and the appeal from said decision rejecting it and the accompanying papers were transmitted by said register and receiver to said Commissioner of plaintiff's General Land Office, at Washington, D. C., on January 10th, 1883, and were received by said Commissioner on January 18th, 1883.

On February 21st, 1883, the said Commissioner of plaintiff's General Land Office denied the application of said Matthieson and Ward for a reinstatement of said desert-land entry, and in making said decision said, in relation to the accompanying protest against the State of Nevada's selection (list No. 24), so far as it related to the lands herein specifically described, "that the question of
7 the validity of the State selection will be" "in due course of action thereon by this office." Upon receipt by the said Commissioner of plaintiff's General Land Office of notice of said application for a patent for a mill site adverse to the claim and selection of the State of Nevada (said list No. 24), in so far as it concerned the lands herein particularly described, said Commissioner caused a note of the conflicting claim to be made in pencil on the margin of said list No. 24, opposite the tracts in controversy, by writing the words "mill site" on said margin.

That this was and is the customary way, according to the usual and regular method in plaintiff's General Land Office, of denoting the existence of a claim adverse to a State selection, and such note operated as a suspension of action upon said State selection until the adverse claim of said application for a patent for a mill site could be disposed of in due course of business in said General Land Office.

8 While said State selection list No. 24 was in plaintiff's General Land Office and before the said Commissioner thereof at Washington, D. C., said list No. 24 was subject to inspection and was inspected by the parties in interest and their agents and attorneys, and before said list No. 24 was taken up for action by said Commissioner of plaintiff's General Land Office the said note and words "mill site," on the margin of said list, were fraudulently erased by some person whose name is unknown to the officers and agents of plaintiff for the purpose and with the fraudulent intention of obtaining action upon said State selection embraced in said list No. 24 favorable to said State of Nevada.

When said list No. 24 was taken up for action and certification by

said Commissioner of plaintiff's General Land Office said lands herein specifically described were by mistake, together with other lands embraced in said list, certified and approved to said State of Nevada by reason of said fraudulent erasure of said marginal note of conflicting claim made upon the margin of said list No. 24, as aforesaid.

9 That in December, A. D. 1883, the matter of said mill-site claim was taken up for action in plaintiff's General Land Office in connection with said selection of the State of Nevada of the lands herein described, embraced in said list No. 24, when plaintiff, through its officers and agents, for the first time ascertained and discovered that said land had been approved to the State of Nevada, as above set forth, and the fraud by which said approval had been secured.

On May 20th, 1882, said Joseph T. Williams, defendant, made application to the State of Nevada for the purchase of the east half of the southeast quarter of section thirty-three and the west half of the southwest quarter of section thirty-four of township eight north of range fifty east, and on February 2d, 1884, the State of Nevada, in compliance with said application, acting by and through its officers and agents, entered into a written contract with said defendant, Joseph T. Williams, a copy of which said contract is hereto attached, marked "Exhibit A," and is hereby referred to and made a part hereof, for the sale *of* to said Williams, according to

10 the laws of the State of Nevada, of the said last-described lands, upon which said mill site is situated, and to issue a patent therefor to him when the whole of the purchase price thereof shall be paid to said State.

That by reason of the said application of said defendant, Williams, to purchase the said lands of the State of Nevada, and by reason of said contract of said State to sell and patent said lands to said defendant, Williams, the said State of Nevada and its officers and agents refuse to return said State selection list No. 24 to the General Land Office of plaintiff, at Washington, D. C., for the correction of said mistake in the certification and approval of the lands herein particularly described to the State of Nevada.

That the value of the land herein particularly described and in controversy is more than five hundred — ($500.00), and by reason of the improvements and erection of a quartz mill thereon by the said applicants for a mill site, said Matthieson and Ward, said land and improvements are of the value of fifty thousand ($50,000.00) dollars.

11 That said land, mill site, and improvements erected thereon by said Matthieson and Ward, and at their expense, will pass to the defendant Williams by virtue of his said contract with the said State of Nevada, unless said contract is annulled and set aside; that immediately upon the discovery of the fraud, as herein alleged, by the Commissioner of the General Land Office of plaintiff, said Commissioner, on, to wit, December 11th, A. D. 1883, notified the Governor of the State of Nevada of the false and fraudulent manner in which the certification of said list had been obtained, and of

the claim and determination of the said plaintiff to annul and vacate the certification of said list so far as it affected the said land hereinbefore described.

That said Commissioner of the General Land Office of plaintiff made demand upon the Governor of the State of Nevada for the return of said list No. 24 to said Commissioner of plaintiff, and that said Governor of said State declined and refused to return said list by reason of the application of said Williams to purchase said land, as hereinbefore set out.

12 That the said defendant, Williams, before entering into said contract with said State of Nevada of date February 2d, 1884, had full knowledge of the claim and demand of said plaintiff and of the determination of said plaintiff to annul and vacate the certification of said list No. 24 as far as it affected the land hereinbefore described and contracted for by said defendant, Williams, with said State of Nevada.

That said defendant, Williams, entered into said contract with said State of Nevada of date February 2d, 1884, with full knowledge of the fraud hereinbefore alleged and with full knowledge of the false and fraudulent manner by which the certification of said list to said State of Nevada had been procured, and with the full knowledge of the claim and determination of said plaintiff to annul and vacate the certification of said list No. 24 so far as it affected the land so contracted for by said Williams with said State of Nevada of date February 2d, A. D. 1884.

Wherefore plaintiff prays the judgment and decree of this court adjudging that the certification and approval to the State of

13 Nevada of the selection of lands described in list No. 24 as hereinbefore set forth in so far as the same embraces the lands hereinbefore specifically described was and is null and void and canceling and setting aside said contract between said defendant, Williams, and the State of Nevada for the sale by said State to Williams of said lands, and that said defendant, Williams, have and take nothing under or by virtue of said contract, in order that said list No. 24 may be returned by the State of Nevada and its officers and agents into the General Land Office of plaintiff for the correction of the mistake hereinbefore set forth and in order that the conflict between the selection of the State of Nevada in list No. 24 and the said application for a patent for a mill site may be determined and adjusted in plaintiff's General Land Office according to law, and for such other and further relief as in the premises to this honorable court may seem just and equitable and for its costs of suit.

BENJAMIN HARRIS BREWSTER,
Attorney General of the United States,

14 By TRENMOR COFFIN,
Attorney for the United States in and for the District of Nevada.

JAMES D. TORREYSON AND
CURTISS & BURDETT AND
ABBOTT & FULLER,
Of Counsel.

15 EXHIBIT A.

This article of agreement, made and entered into this second day of February, 1884, by and between the State of Nevada, acting through C. S. Preble, surveyor general and *ex officio* register of the State land office of said State, party of the first part, and J. T. Williams, of the county of Nye, in the State of Nevada, party of the second part, witnesseth:

That the party of the first part, for and in consideration of one dollar and twenty-five cents ($1.25) per acre, in good and lawful money of the United States, to be paid, as hereinafter expressed, by the party of the second part, doth agree to convey by good and sufficient patent in fee simple to the party of the second part the following-described lands, to wit:

Description.	Section.	Township.		Range.
		North.	South.	East.
E. ½ of S. E. ¼	33	8		50
W. ½ of S. W. ¼	34	8		50

Mt. Diablo meridian, containing one hundred and sixty (160) acres; in consideration of which the party of the second part, for himself, his heirs or assigns, doth agree to pay to the State of Nevada the sum of one dollar and twenty-five cents ($1.25) per acre, as above stated, at the times and in the manner mentioned in this article, to wit, one-fifth (⅕) of the amount at the time of the making of this contract and the balance in nine (9) equal annual instalments, with interest at the rate of ten (10) per cent. per annum, payable annually, upon all deferred installments, as is provided in section nine (9) of an act entitled "An act to provide for the selection and sale of lands that have been or may hereafter be granted by the United States to the State of Nevada," approved March 5, 1873, and the acts amendatory thereof and supplementary thereto.

15½ And it is hereby further provided and agreed that the party of the second part, his heirs or assigns, may at any time prior to the maturity of this contract make full payment for the land described in this article and receive from the State of Nevada a patent for the same, issued in the name of the applicant.

This contract is made upon the express conditions, viz: That if the said J. T. Williams, party of the second part, shall fail to pay the principal sum herein specified or the interest thereon or any part of the same according to the terms of this agreement, as is herein stipulated, then the land herein described shall immediately and unconditionally revert to the State of Nevada and be thereafter sub-

ject to sale in the manner and under the same conditions as though this contract of sale had not been made.

Witness our hands and seals this second day of February, A. D. 1884.

C. S. PREBLE, [SEAL.]
Surveyor General and ex Officio Land Register.
JOS. T. WILLIAMS, [SEAL.]
By —— ——, *Agent.*

Witnesses:
A. D. ROCK.
J. C. POWELL.

NOTE.—The first payment ($40) on this contract was made May 22d, 1882, as shown by receipt No. 166. The second payment will be due one year from the date of this contract. Full payment may be made at any time.

16 [Endorsed:] 2 M 2. 160 acres. Contract No. 2122. On application No. 4731. J. T. Williams. Payments: 1st, paid, 188–, $40.00; 2d, 1885, $33.80; 3d, 1886, $32.00; 4th, 1887, $30.25; 5th, 1888, $28.45; 6th, 1889, $26.65; 7th, 1890, $24.90; 8th, 1891, $23.10; 9th, 1892, $21.35; 10th, 1893, $19.55. February 2d.

17 Endorsed: In U. S. circ. court, ninth circuit and district of Nevada. United States, pl'ff, *vs.* J. T. Williams, def't. Bill of complaint. Filed Dec. 18, 1884. T. J. Edwards, clerk. Benjamin Harris Brewster and Trenmor Coffin, att'ys for pl't'ff. J. D. Torreyson, Curtis and Burdett, and Abbott and Fuller, of counsel.

18 *Subpœna.*

Circuit Court of the United States in and for the District of Nevada.
In Equity.

The President of the United States of America to J. T. Williams, Greeting:

You are hereby commanded that you personally be and appear before the judges of our circuit court of the United States for the district of Nevada, in our said court, on or before the next rule day of said court, occurring after twenty days from the issuance of this subpœna, at Carson City, Ormsby county, State of Nevada, in said district, to answer to a bill of complaint exhibited against you in our said court by the United States, and to stand to, perform, and abide such order and decree as the court shall make in that behalf; and this you are not to omit under the penalty of two hundred and fifty dollars.

Witness the Honorable Morrison R. Waite, Chief Justice of the Supreme Court of the United States, this 18th day of Dec., in the year of our Lord one thousand eight hundred and eighty-four, and of our Independence the 109th.

19 [SEAL.] Attest my hand and the seal of said court affixed at my office, in Carson City, the day and year last aforesaid.

T. J. EDWARDS, *Clerk.*

Memorandum Pursuant to Rule 12, *Supreme Court U. S.*

You, the said J. T. Williams, are to enter your appearance in the office of the clerk of said court, at Carson City aforesaid, on or before the next rule day of said court, occurring after twenty days from the time of the issuance of this writ; otherwise the said bill will be taken *pro confesso*.

T. J. EDWARDS,
Clerk of the United States Circuit Court for the District of Nevada.

I hereby accept service of the within subpœna this 22d day of December, A. D. 1884, for and on behalf of the defendant, J. T. Williams, herein and upon his authorization to accept said service.
Carson City, Dec. 22d, 1884.

T. W. HEALY,
Attorney for J. T. Williams.

(Endorsed:) U. S. circuit court for the district of Nevada. In equity. United States *vs.* J. T. Williams. Subpœna. Filed Dec. 23rd, 1884. T. J. Edwards, clerk.

20 *Stipulation & Appearance.*

In the Circuit Court of the United States, Ninth Circuit and District of Nevada.

THE UNITED STATES OF AMERICA, Plaintiff,
vs.
J. T. WILLIAMS, Defendant.

Stipulation.

It is hereby stipulated by and between the parties to the above-entitled action, by their respective attorneys, that the defendant, J. T. Williams, enters his appearance in the above action by and through his attorney, T. W. Healy, Esq., and shall have until and including rule day in February, A. D. 1885, to wit, February 2nd, 1885, in which to plead to the bill of complaint in the above action.
Dated Dec. 22d, 1884.

J. D. TORREYSON,
Of Counsel for Pl'ff.
T. W. HEALY,
Att'y for Def't, T. J. Williams.

(Endorsed:) In the circuit court of the U. S., ninth circuit and district of Nevada. United States, pl'ff, *vs.* J. T. Williams, def't. Stipulation entering appearance of def't. Filed Dec. 23, 1884. T. J. Edwards, clerk.

21 *Stipulation.*

In the Circuit Court of the United States, Ninth Circuit and District of Nevada.

THE UNITED STATES OF AMERICA, Plaintiff,
vs.
J. T. WILLIAMS, Defendant.

It is hereby stipulated by and between the parties to the above-entitled action, by their respective attorneys, that the defendant, J. T. Williams, enters his appearance in the above-entitled action by and through his attorney, T. W. Healy, Esq., and shall have until and including the fifteenth day of February, A. D. 1885, in which to plead to the bill of complaint in the above-entitled action.

J. D. TORREYSON,
Of Counsel for Pl'ff.
T. W. HEALY,
Att'y for Def't, J. T. Williams.

T. COFFIN,
U. S. Dist. Att'y for Nev., Solicitor for Pl'ff.

(Endorsed:) In the circuit court of the United States, ninth circuit and district of Nevada. United States, pl'ff, *vs.* J. T. Williams, def't. Stipulation entering appearance of def't and extending time to plead. Filed Jan'y 27, 1885. T. J. Edwards, clerk.

22 *Demurrer.*

In the Circuit Court of the United States, Ninth Circuit and District of Nevada.

THE UNITED STATES OF AMERICA, Plaintiff,
vs.
JOSEPH T. WILLIAMS, Defendant.
} In Equity.

The demurrer of Joseph T. Williams, defendant, to the bill of complaint of The United States of America, the above-named plaintiff.

To the judges of the circuit court of the United States, ninth circuit and district of Nevada:

This defendant, by protestation, not confessing any or all of the matters and things in the plaintiff's bill of complaint contained to be true in such manner and form as the same is therein set forth and alleged, doth demur to said bill, and for cause of demurrer showeth that the plaintiff hath not in and for his said bill made or stated such a case as entitles it in a court of equity to any discovery from this defendant or to any relief against him as to the matters contained in the said bill or any such matters; that the said bill doth not contain any matter of equity whereon the court can ground any

decree or give to the plaintiff any relief against this defend-
23 ant; that the bill of complaint shows (page 3, commencing line 26) "that the defendant, Joseph T. Williams, made desert-land entry No. 158, at Eureka, Nevada, in said district, on May 19th, 1879, embracing, among other tracts of land, the east half of the southeast quarter of section thirty-three and the west half of the southwest quarter of section thirty-four, township eight north, of range fifty east, in said district; that on May 20th, 1882, defendant Williams executed a written relinquishment of said desert-land entry, which relinquishment was filed in the local land office of plaintiff at Eureka, in said district, on June 9th, 1882, whereupon said desert-land entry was cancelled by order of the Commissioner of the General Land Office of plaintiff, dated August 4th, 1882, and received by the register and receiver of plaintiff's local land office at Eureka on August 12th, 1882, (page 4, commencing at line 9 to line 23).

That on or about September 2d, A. D. 1882, the State of Nevada, through its proper officers and agents, selected a list of lands to be approved to said State by plaintiff, acting through its proper officers and agents, under the act of Congress of June 16, 1880, enti-
24 tled "An act to grant the State of Nevada lands in lieu of the sixteenth and thirty-sixth sections in said State," and presented said list at the local land office of plaintiff at Eureka, Nevada (page 1, line 23, to page 2, line 8); that said list was numbered as list No. 24 and embraced, with other lands, the lands herein specifically described (page 2, to line 17).

That on September 6th, A. D. 1882, T. O. Mathiessen and L. B. Ward, acting by their attorney, filed in the General Land Office of plaintiff, at Washington, D. C., an application for the reinstatement of said desert-land entry No. 158, together with a protest against so much of the aforementioned selection of lands by the State of Nevada, list No. 24, as embraced the land hereinbefore specifically described (page 5, line 5 to line 20); that in October, 1882, the register and receiver of plaintiff's local land office at Eureka, Nevada, in the due course of the business at that office transmitted said list of lands selected by the State of Nevada, being list No. 24, under said act of Congress of June 16th, 1880, to plaintiff's General Land Office, at Washington, D. C. (page 4, at line 23, to page 5, line 4).

25 That on January 8th, 1883, said Matthiessen and Ward made an application for a patent for a mill site on the lands hereinbefore described at the local land office of plaintiff at Eureka, Nevada; that the register and receiver at said local land office rejected the said application for a patent to the lands specifically described; that Matthiessen and Ward aforesaid duly appealed from said decision rejecting their application for a patent of said register and receiver (page 5, line 27, to page 6, line 27); that on February 21st, 1883, the said Commissioner of plaintiff's General Land Office denied the application of said Matthiessen and Ward for a reinstatement of said desert-land entry (page 7, from line 10 to line 20); that on May 20th, 1882, said Joseph T. Williams, defendant, made appli-

cation to the State of Nevada to purchase the lands specifically described herein, and on February 2d, 1884, the State of Nevada, in compliance with said application, acting by and through its officers and agents, entered into a written contract with said defendant,
Joseph T. Williams, *and* to issue a patent therefor to him
26 when the whole of the purchase-money shall be paid to said
State (page 11, commencing on line 1 to line 12).

That the foregoing facts shown in plaintiff's bill of complaint show that there is a written contract between the State of Nevada and the defendant, Joseph T. Williams; that the legal title to the land in controversy is vested in the State of Nevada, and that said title cannot be divested unless the State of Nevada is made a party defendant to the bill of complaint and have its day in court; that this hon. court cannot make a decree in accordance with the prayer of the complaint "adjudging that the certification and approval to the State of Nevada of the selection of lands described in list No. 24, as hereinbefore set forth, so far as the same embraces the lands hereinbefore specifically described, was null and void," because the State of Nevada is not before the court, nor can any of its rights be adjudicated without notice or representation upon due process of law.

That there is no allegation in the bill of complaint against the
State, but, on the contrary, every contest, as shown by the
27 bill, was decided by plaintiff's officers in the Eureka and
Washington land offices in favor of the State of Nevada and was *res adjudicata.*

That there is no allegation in plaintiff's bill of complaint that but for the alleged fraud the Commissioner of plaintiff's General Land Office would not have certified and the Secretary of plaintiff's Interior Department approved the hereinbefore-described land to the State, or that such certification and approval are not just and proper to be made in the premises.

That, as shown by the bill of complaint, there is no allegation that the plaintiff's Commissioner of General Land Office had arrived at any conclusion or determination to certify the lands specifically described to any person or persons other than to the State of Nevada.

That this hon. court cannot in equity decree that a contract be cancelled and set aside upon the petition of a plaintiff who is not a party thereto and when only one of the contracting parties is subject to the jurisdiction of the court.

That the bill of complaint shows that at the time of the
28 selection by the State of the land in controversy there were
no valid conflicting claims, but, on the contrary, shows that the desert-land entry No. 158 was cancelled; that plaintiff's register and receiver at Eureka so decided; that plaintiff's Commissioner of General Land Office affirmed the decision of the officers of plaintiff's local land office at Eureka, Nevada, and that the whole matter was *res adjudicata.*

That the allegation of fraud in the bill of complaint (pages 8 and 9) is insufficient, in that the bill shows that the words "mill site" *was* written in pencil on the margin, which words mill site are

alleged by plaintiff to give notice of a conflict, and that the erasure of the words mill site so written in pencil on the margin of the list was not a notice of conflict in the general meaning of words and the use of language; that the useless, unnecessary, and meaningless words "mill site" written in pencil on the margin of a list — lands might have been erased by any clerk in the proper performance of his duty.

That at the time of the selection of the land in controversy
29 by the State of Nevada there were no valid conflicting claims against such selection (as decided by register and receiver and such decision affirmed upon appeal by plaintiff's Commissioner of General Land Office, page 7, from line 10 to line 15), and such certification was made by the Commissioner of plaintiff's General Land Office and approved by plaintiff's Secretary of Interior as of course.

That the title of the State to the land in controversy cannot be divested unless by due process of law (article 5, Constitution of the United States), and that the State of Nevada has not by any process been subjected to the jurisdiction of the court.

That under the pleadings of the bill of complaint the decree prayed for in plaintiff's prayer cannot be made, because it asks a decree against the State of Nevada, when the State has not been made a party to the bill.

Wherefore, and for divers other good causes of demurrer appearing in the said bill, the defendant doth demur thereto, and humbly demands the judgment of this court whether he shall be compelled to make any further or other answer to the said bill, and
30 prays to be hence dismissed with his costs and charges in this behalf most wrongfully sustained.

JOSEPH T. WILLIAMS, *Defendant*,
By T. W. HEALY,
Solicitor and of Counsel for Defendant.

UNITED STATES OF AMERICA, }
District of Nevada, } ss:

T. W. Healy, solicitor and of counsel in the above cause, being duly sworn, deposes and says that the foregoing demurrer is not interposed to delay the cause or any proceedings therein.

T. W. HEALY.

Subscribed and sworn to before me this 14th day of February, 1885.

T. J. EDWARDS,
U. S. Commissioner, Dist. Nevada.

I hereby certify that I am a counselor-at-law in the circuit court of the United States, ninth circuit and district of Nevada, and in my opinion the foregoing demurrer of Joseph T. Williams, defendant, to the bill of complaint of The United States of America, plaintiff, is well founded in point of law and proper to be filed in the above cause.

ROB'T M. CLARKE,
Attorney & Counselor-at-Law.

Endorsed: I hereby acknowledge service of a copy of the within demurrer February 14th, 1885. T. Coffin, U. S. district att'y for Nevada, solicitor for pl'ff. In the U. S. cir. court, ninth circuit and district of Nevada. United States, pl'ff, *vs.* J. T. Williams, def't. Demurrer. Filed Feb'y 14, 1885. T. J. Edwards, clerk. I hereby acknowledge service of a copy of the within demurrer February 14, 1885. T. Coffin, U. S. district att'y for Nevada, solicitor for pl'ff.

31 *Lis Pendens.*

In the Circuit Court of the United States, Ninth Circuit and District of Nevada.

UNITED STATES OF AMERICA, Plaintiff,
vs.
JOSEPH T. WILLIAMS, Defendant.

Notice of pendency of action.

To J. W. Adams, Governor of the State of Nevada, and C. S. Preble, surveyor general and *ex officio* State land register of the State of Nevada:

You are hereby notified that the United States of America has commenced an action in the above-entitled court against Joseph T. Williams, defendant above named, for the purpose of cancelling and setting aside the contract between the State of Nevada and said Joseph T. Williams, of date of February 2d, A. D. 1884, for the sale by the State of Nevada to the said Williams of the east half of the southeast quarter of section 33 and the west half of the southwest quarter of section 34, all in township 8 north, of range 50 east, Mt. D. B. & M., situated in the county of Nye, State of Nevada, and to have cancelled and set aside and declared to be null
32 and void the certification and approval to the State of Nevada of the land above described by the United States upon the ground of fraud and mistake in said certification and approval, as fully set forth in plaintiff's bill of complaint now on file in said court and cause, and upon the further ground that said land was not open to selection by the State of Nevada and could not be legally certified or approved to the State of Nevada.

A. H. GARLAND,
Attorney General of the United States,
By TRENMOR COFFIN,
U. S. Dist. Att'y for Nevada, Att'ys for Pl'ff.
ABBETT & FULLER AND
JAMES D. TORREYSON,
Of Counsel.

(Endorsed:) In the U. S. cir. c't, ninth circuit and dist. of Nevada. United States, pl'ff, *v.* Jos. T. Williams, def't. Notice of pendency of action. We hereby accept and acknowledge service of the within notice by copy this 13th day of March, A. D. 1885. J. W. Adams, Governor. C. S. Preble, surveyor general. Filed March 13, 1885. T. J. Edwards, clerk.

33 *Answer.*

In the Circuit Court of the United States, Ninth Circuit and District of Nevada.

THE UNITED STATES OF AMERICA, Plaintiff,
vs.
JOSEPH T. WILLIAMS, Defendant. } In Equity.

The answer of Joseph T. Williams, defendant, to the bill of complaint of The United States of America, plaintiff.

The defendant, now and at all times hereafter saving and reserving to himself all and all manners of benefit and advantage of exception to the many errors and insufficiencies in the complainant's bill of complaint contained, for answer thereunto or unto so much or such parts thereof as this defendant is advised is material for him to make answer unto, answers and says he admits, as alleged in plaintiff's bill of complaint, that on or about September 2d, A. D. 1882, the State of Nevada, through its proper officers and agents, selected a list of lands to be approved to said State by plaintiff, acting through its proper officers and agents, under the act of Congress of June 16, 1880, entitled "An act to grant the State of Nevada lands in lieu of the sixteenth and thirty-sixth sections in said State," and
34 presented said list at the local land office of plaintiff at Eureka, Nevada.

Defendant admits that the said list of lands selected by the State of Nevada was designated as list No. 24 and embraced, with other lands, the east half of the southeast quarter of section thirty-three and the west half of the southwest quarter of section thirty-four of township eight north of range fifty east, in said district.

Defendant admits that on May 5th, 1883, the Secretary of the Interior of plaintiff, upon the certificate of the Commissioner of the General Land Office of plaintiff, at Washington, D. C., approved all of the lands embraced in said list No. 24 to the State of Nevada.

Defendant admits that said Commissioner of the General Land Office certified that the lands embraced in said list No. 24 were open to such selection and free from conflict with other claims, and avers that the lands embraced in said list No. 24 were open to such selection and free from conflict with other claims.

Defendant denies that the lands embraced in said list No. 24 were not open to selection by the State of Nevada, and denies that they were not free from conflict with other claims.

35 Defendant denies that he made or caused to be made any erasure of records, fraudulent or otherwise, or had any knowledge of such erasure until he heard of the allegation of such erasure in December, A. D. 1883, as emanating from the Hon. Secretary of the Interior, at Washington, D. C.

Defendant denies that alleged erasure was a sufficient cause for the withholding of the certification of the said Commissioner of plaintiff's General Land Office of said lands embraced in said list

No. 24 or the approval of plaintiff's Secretary of the Interior to said list No. 24, or that the alleged erasure was sufficient to induce such certification and approval, or that if the alleged erasure had not been made that the said list No. 24, so certified and approved upon its face, would not have been vitiated thereby.

Defendant avers that he made desert-land entry No. 158 at the land office of plaintiff at Eureka, Nevada, in said district, May 19, 1879, embracing the east half of the southeast quarter of section thirty-three and the west half of the southwest quarter of section thirty-four, township eight north, of range fifty east, in said
36 district; that on May 20, 1882, said defendant executed a written relinquishment of said desert-land entry and filed the same June 9th, 1882; whereupon said desert-land entry was cancelled by an order of the Commissioner of plaintiff's General Land Office, dated August 4th, 1882, and received at plaintiff's land office on August 12th, 1882.

Defendant avers that on the 22d day of May, 1882, the State of Nevada, through its proper officers and agents, received his application for the lands hereinbefore specifically described; that said State, through its proper officers, selected said lands embraced, with other lands, on said list No. 24, and that said list was filed on September 2d, 1882, in the local land office of plaintiff at Eureka, Nevada, and that the register and receiver certified the same to be open to selection by the State of Nevada and free from conflicting claims; that in August, A. D. 1882, in due course, the register and receiver transmitted said list of lands selected by the State of Nevada, being list No. 24 under the said act of Congress of June 16, 1880, to
37 plaintiff's General Land Office, at Washington, D. C.

Defendant is advised that in the meaning of the act of Congress of June 16, 1880, that the said lands specifically hereinbefore described were and are "unappropriated non-mineral lands in the meaning of said act; are lands to which some person, by some act of public record in the United States local land office, has, under the law, done something to acquire the title to the same." Defendant believes that F. O. Matthiessen and L. B. Ward, acting through their attorneys, filed in the General Land Office, at Washington, D. C., an application for the reinstatement of desert-land entry No. 158, together with a protest against so much of the aforementioned selection by the State of Nevada, list No. 24, as embraced the lands specifically described; that on February 21st, 1883, the said Commissioner of plaintiff's General Land Office denied the application of said Matthiessen and Ward for reinstatement of said desert-land entry.

On January 8, 1883, said Matthiessen and Ward applied to local land office of plaintiff at Eureka for a patent for a mill
38 site on the land embraced in said original desert-land entry No. 158 upon the tracts herein specifically described; that the register and receiver rejected the application for a patent for a mill site for the reason that such mill site was embraced in said selection of the State of Nevada, said list No. 24, filed in the land office

at Eureka on September 2d, 1882. Defendant is informed and believes that from such decision appeal was taken.

For further answer defendant avers that the whole subject-matter of plaintiff's bill of complaint is *res adjudicata.*

Defendant avers and maintains that at the time of the selection by the State of Nevada of the lands specifically described that there were no valid interfering rights; that the same is shown by the certificates of the register and receiver of the United States land office and J. J. Barnes and Henry Howes, chief of pre-emption division in United States General Land Office.

Defendant avers that the land embraced in list No. 24 was approved by plaintiff's Secretary of the Interior to the State of Nevada.

39 Defendant avers that the application for a mill site (and appeal by Matthiessen and Ward) on the land which had been selected by the State of Nevada four months previously is frivolous and should not be entertained.

Defendant avers that when desert-land entry No. 158 was cancelled that the land at that moment of the cancellation became "unappropriated non-mineral land" in the meaning of the statute aforementioned and was subject to selection by the State of Nevada.

All of which matters and things the said defendant is ready to aver, maintain, and prove as this honorable court shall direct, and hereby prays to be hence dismissed with his reasonable costs and charges in that behalf sustained.

T. W. HEALY,
Solicitor and of Counsel.

STATE OF NEVADA, } ss:
County of Ormsby, }

T. W. Healy, being first duly sworn, says that he is solicitor and of counsel in the above-entitled cause; that he has heard the foregoing answer and knows the contents thereof; that the same

40 is true of his own knowledge except as to matters stated therein on information and belief, and that as to those matters he believes it to be true.

T. W. HEALY.

Subscribed and sworn to before me this first day of June, 1885.

T. J. EDWARDS,
Com'r U. S. Cir. Court, Dist. Nevada.

Endorsed: Due service of a copy of the within answer acknowledged this 1st day of June, 1885. Trenmor Coffin and J. D. Torreyson, solicitors for plaintiff. In U. S. circ. court, ninth circuit and district of Nevada. United States, pl'ff, *vs.* J. T. Williams, def't. Answer. Filed June 1, 1885. T. J. Edwards, clerk.

41 *Except'ns to Answer.*

In the Circuit Court of the United States, Ninth Circuit and District of Nevada.

UNITED STATES OF AMERICA, Plaintiff,
vs.
JOSEPH T. WILLIAMS, Defendant.

Exceptions to defendant's answer.

The plaintiff above named, by A. H. Garland, Attorney General of the United States, and Trenmor Coffin, attorney for the United States in and for the district of Nevada, excepts to the answer of defendant herein for insufficiency, and specifies and points out such insufficiency as follows:

That many of the allegations of plaintiff's complaint are in terms admitted to be true.

That defendant alleges that he believes other of said allegations to be true, and does not attempt or pretend to answer or deny them; and as to these allegations plaintiff asks that the bill of complaint herein be taken as confessed by defendant's said answer.

42 That it is alleged in said bill of complaint that said lands hereinbefore specifically described were not in fact so open to selection by the State of Nevada and were not so free from conflict with other claims, and that said action of the Commission- of the General Land Office of plaintiff was induced by the fraudulent action and erasure of records by some person, whose name is unknown to plaintiff, acting in the interest of said Joseph T. Williams, defendant, as hereinafter set forth, and that by reason of said fraud said certification and approval of said lands to the State of Nevada were and are null and void.

That the facts and circumstances under which said lands were so certified and approved and the fraudulent acts which induced said certification are as follows, to wit: (Here follow numerous allegations from page 3, line 26, to page 5, line 27, which are in terms admitted and realleged in defendant's answer.) At line 27, page 5, plaintiff's bill of complaint proceeds as follows:

"On January 8th, 1883, said Matthieson and Ward made an application at the local land office of plaintiff at Eureka, Nevada, for a patent for a mill site on lands * * * herein specifically described.

43 "The register and receiver of plaintiff's local land office at Eureka, Nevada, rejected said application for a patent for a mill site for the reason that the land applied for for such mill site was embraced in said selection of the State of Nevada. * * * From the decision of said register and receiver rejecting said application for a patent for a mill site said Matthieson and Ward duly appealed, according to law, on the same day upon which said decision was made to the Commissioner of the General Land Office of plaintiff, at Washington, D. C., and said application for a patent for

a mill site and the appeal from said decision rejecting it and the accompanying papers were transmitted by said register and receiver to said Commissioner of plaintiff's General Land Office, at Washington, D. C. * * * Upon the receipt by said Commissioner of plaintiff's General Land Office of notice of said application of a patent for a mill site adverse to the claim and selection of the State of Nevada, in so far as it concerned the lands herein particularly described, said Commissioner caused a note of said conflicting claim to be made in pencil on the margin of the list of lands selected
44 by the State of Nevada opposite the tracts in controversy by writing the words 'mill site' on said margin.

"That this was and is the customary way according to the usual and regular method of denoting the existence of a claim adverse to a State selection, and such note operated as a suspension of action upon said State selection until the adverse claim of said application for a patent for a mill site could be disposed of in due course of business in plaintiff's General Land Office.

"While said State selection was in plaintiff's General Land Office and before the said Commissioner thereof said list was subject to inspection and was inspected by the parties in interest and their agents and attorneys, and before said list was taken up for action by said Commissioner of plaintiff's General Land Office the said note and words 'mill site' on the margin of said list were fraudulently erased by some person, whose name is unknown to the officers and agents of plaintiff, for the purpose and with the fraudulent intention of obtaining action upon said State selection favorable to the State of Nevada.

45 "When said State selection was taken up for action and certification by said Commissioner said lands herein specifically described were, by mistake, together with other lands, embraced in said list certified and approved to the State of Nevada by reason of said fraudulent erasure of said marginal note of conflicting claim made upon the margin of said list as aforesaid.

"That in December, 1883, the matter of said 'mill-site' claim was taken up for action in 'plaintiff's General Land Office, * * * when plaintiff, through its officers and agents, for the first time ascertained and discovered that said land had been approved to the State of Nevada, as above set forth, and the fraud by which said approval had been secured."

(Here follow, from page 10, line 14, of plaintiff's bill of complaint, to end of page 11, allegations not attempted to be answered or denied by defendant.)

Plaintiff's bill of complaint then proceeds, on page 12, as follows:

"That the value of the land herein particularly described and in controversy is more than $500.00, and by reason of the im-
46 provements and erection of a quartz mill thereon by the said applicants for a mill site, Matthieson and Ward, are of the value of $50,000.00. * * *

"That, immediately upon the discovery of the fraud, as herein alleged, by said Commissioner, said Commissioner notified the Governor of the State of Nevada of the false and fraudulent manner in

which the certification of said list had been obtained and of the claim and determination of plaintiff to annul and vacate the certification of said list, so far as it affects the said land herein described; * * * that said defendant Williams before entering into said contract with said State of Nevada, of date February 2d, 1884, had full knowledge of the claim and demand of said plaintiff and of the determination of said plaintiff to annul and vacate the certification of said list, so far as it affected the land herein described and contracted for by said defendant Williams with said State of Nevada."

That said defendant Williams entered into said contract with said State of Nevada, of date February 2d, 1884, with full knowledge of the fraud hereinbefore alleged and with full knowledge of
47 the false and fraudulent manner by which the certification of said list to said State of Nevada had been procured and with the full knowledge of the determination of plaintiff to annul and vacate the certification of said list, so far as it affected the land so contracted for by said Williams with said State of Nevada.

That the only denials or answers to plaintiff's bill of complaint contained in defendant's answer are as follows:

"Defendant denies that the lands embraced in said list were not open to selection by the State of Nevada, and denies that they were not free from conflict with other claims."

Plaintiff excepts to this denial and shows to the court that it is insufficient, in this, that it denies a conclusion of law and denies none of the facts set forth in plaintiff's bill of complaint showing a conflict with other claims.

Defendant denies that he made or caused to be made any erasure of records, fraudulent or otherwise, or had any knowledge of such erasure until he heard of the allegations of such erasure in
48 December, A. D. 1883, as emanating from the honorable Secretary of the Interior at Washington, D. C.

Plaintiff excepts to this denial and shows to the court that it is insufficient, in this, that defendant does not deny that said fraudulent erasures were in fact made, and does not deny that they were made in his interest and by some one acting in his interest, as set out and alleged in plaintiff's bill of complaint.

Defendant does not deny that before he entered into the contract with the State of Nevada for the purchase of the lands described in plaintiff's complaint he had full knowledge of the fraudulent erasure of said record in plaintiff's General Land Office, at Washington, D. C., and of plaintiff's determination to annul and vacate said certification to the State of Nevada.

Does not deny that he entered into a contract with the State of Nevada for the purchase of said lands with full knowledge of all of said frauds, as set out in plaintiff's complaint.

Defendant does not deny the allegation of plaintiff from page 10, line 22, to page 11, line 11, that he entered into said con-
49 tract with the State of Nevada for the purchase of said lands on the 2d day of February, A. D. 1884, as also further appears by a copy of said contract attached to plaintiff's complaint, marked Exhibit "A," and not denied by defendant.

And defendant in terms admits in his answer, folio 3, lines 20 to 25, that a knowledge of said frauds came to him, emanating from the Hon. Secretary of the Interior of plaintiff, in December, 1883.

"Denies that the alleged erasure was a sufficient cause for the withholding of the certification of the said Commissioner of plaintiff's General Land Office of the said land embraced in said list, or that the alleged erasure was sufficient to induce said certification and approval, or that if the alleged erasure had not been made that the said list so certified and approved upon its face would not have been vitiated thereby."

Plaintiff excepts to and shows the insufficiency of this denial as follows:

That — is not in denial of or answer to any allegation of plaintiff's bill of complaint.

It is not alleged in plaintiff's bill that said erasure was sufficient cause for the withholding of said certification and approval to the State of Nevada of said land, but that the conflict pending in the General Land Office which was designated and referred to by said marginal note, which note was fraudulently erased, was sufficient cause for withholding said certification and approval until such conflict was determined and disposed of.

That the denial — in the following words:

"Denies * * * that if the alleged erasure had not been made that the said list so certified and approved upon its face would not have been vitiated thereby is ambiguous, unintelligible, and uncertain, and that it cannot be ascertained therefrom what is meant to be denied."

For pretended answer defendant alleges as follows:

Defendant is advised that in the meaning of the act of Congress of June 16th, 1880, that the said lands specifically hereinbefore described were and are unappropriated non-mineral lands in said State.

"That appropriated lands in the meaning of said act are lands to which some person by some act of public record in the United States local land office has under the law done something to acquire the title to the same."

Plaintiff specifies that said last-quoted portion of defendant's answer is insufficient in this:

That defendant does not specify by whom he is advised as to the matter therein stated, whether by his solicitor or his hostler or some other person.

That at best it is an attempt upon the part of said defendant to advise this honorable court as to how it should construe an act of Congress.

"For further answer defendant avers that the whole subject-matter of plaintiff's bill of complaint is *res adjudicata*. Defendant avers and maintains that at the time of selection by the State of Nevada of the lands specifically described there were no valid interfering rights; that the same is shown by the certificates of the register and receiver of the United States land office and J. J. Barnes and Henry Hawes, chief of pre-emption division in United States General Land Office; also the certificate of the Commissioner of plaintiff's General Land Office."

Plaintiff specifies that this averment of *res adjudicata* is insufficient in this, that it is like arguing in a circle.

52 That defendant rests his case upon the very certifications and approvals which plaintiff asks to set aside by this action on account of the fraud practised in obtaining them.

Defendant does not deny, but simply ignores, the various acts of fraud set out by plaintiff in its bill of complaint as an equitable ground of relief.

"For further answer defendant avers that the application for a mill site by *by* Matthieson and Ward on land that had been selected by the State of Nevada four months previously is frivolous and should not be entertained."

Plaintiff excepts to this averment and specifies its insufficiency in this, that it is simply an attempt on the part of defendant to pass upon and determine a question which is now pending before plaintiff's General Land Office, at Washington, D. C., and cannot be properly and legally determined by any other authority or tribunal until first passed upon in that office.

Defendant denies none of the facts upon which said application for a patent for a mill site was made, and does not deny

53 that said appeal was taken and is now pending and undecided, and does not deny that said lands particularly described in plaintiff's bill of complaint were prematurely certified and approved to the State of Nevada by mistake by reason of the frauds committed upon plaintiff in the erasure of the record as set out in plaintiff's bill of complaint.

Further answering, "defendant avers that when the desert-land entry No. 158 was cancelled the land at that moment of the cancellation became unappropriated non-mineral land in the meaning of the statute aforementioned, and was subject to selection by the State of Nevada."

Plaintiff excepts to this averment and specifies its insufficiency in this, that it is simply an averment of defendant's construction of the laws of the United States in relation to the disposition of public lands.

That defendant nowhere in his answer either answers or denies any of the facts alleged of plaintiff's bill of complaint concerning said desert-land entry No. 158, or any other of the facts alleged concerning the occupancy or status of said land.

54 The above and foregoing are all of the answers and denials contained in defendant's answer to the allegations of plaintiff's bill of complaint.

Wherefore plaintiff prays that these exceptions be allowed, and that plaintiff's bill of complaint herein be taken as confessed.

A. H. GARLAND,
Attorney General of the United States,
By TRENMOR COFFIN,
Attorney for the United States in and for the District of Nevada.

JAMES D. TORREYSON,
CURTISS AND BURDETT, AND
ABBOTT & FULLER,
Of Counsel.

Due service of within by copy acknowledged this 29th June, 1885.

T. W. HEALY,
Sol'r for Defendant.

(Endorsed:) In U. S. circ. court, ninth circuit and dist. of Nevada. United States, pl'ff, *vs.* J. T. Williams, def't. Exceptions to defendant's answer. Filed June 26, 1885. T. J. Edwards, clerk. A. H. Garland and Trenmor Coffin, att'ys for pl'ff. J. D. Torreyson, Curtiss & Burdett, and Abbott — Fuller, of counsel.

55 *Order Overruling Exceptions.*

In United States Circuit Court, Ninth Circuit, Dist. of Nevada.

UNITED STATES, Pl'ff,
vs.
J. T. WILLIAMS, Def't. } In Chambers.

The exceptions of plaintiff to the answer of defendant filed herein having been submitted to the judge of said court for consideration, and the said judge having fully considered the same, it is ordered that said exceptions be, and the same and each of them is hereby, overruled.

Carson, Nev., Sept. 21st, 1885.

G. M. SABIN, *Judge.*

(Endorsed:) In U. S. circuit court, 9 circuit, dist. of Nevada. U. S. *v.* J. T. Williams. Order overruling exceptions to answer. Filed Sept. 21, 1885. T. J. Edwards, clerk.

56 *Replication.*

In United States Circuit Court, Ninth Circuit, District of Nevada.

THE UNITED STATES, Plaintiff,
vs.
JOSEPH T. WILLIAMS, Defendant.

Replication of The United States, plaintiff, to the answer of Joseph T. Williams, defendant.

This repliant, saving and reserving to herself all and all manner of advantage of exception to the manifold insufficiencies of said answer, for replication thereunto saith that she will aver and prove her said bill to be true, certain, and sufficient in the law to be answered unto, and that the said answer of said defendant is uncertain, untrue, and insufficient to be replied unto by this repliant; all which matters and things this repliant is and will be ready to aver and prove as this honorable court shall direct, and hereby joins issue

upon said answer, and humbly prays as in and by her said bill she has already prayed.

57

A. H. GARLAND,
Attorney General of the United States, Solicitor for Plaintiff,
By TRENMOR COFFIN,
Attorney for the United States in and for the District of Nevada.

JAMES D. TORREYSON,
ABBOTT & FULLER, AND
CURTIS & BURDETT,
Of Counsel.

Service of the within replication after filing the same is hereby admitted this 22d day of September, A. D. 1885.

T. W. HEALY,
Attorney for Defendant.

Endorsed: In U. S. circuit court, ninth circuit, district of Nevada. United States *vs.* Jos. T. Williams. Plaintiff's replication to defendant's answer. Filed Sept. 22d, 1885. T. J. Edwards, clerk.

58 *Stipulation for — Testimony in Nevada.*

In the Circuit Court of the United States, Ninth Circuit and District of Nevada.

UNITED STATES, Plaintiff,
vs.
JOSEPH T. WILLIAMS, Defendant.

Stipulation.

It is hereby stipulated and agreed by and between the parties to the above-entitled suit that either party thereto may take testimony to be used in said suit before T. J. Edwards, a commissioner of said court at Carson City, Nevada, upon oral interrogatories to be propounded to witnesses before him by their agents, solicitors, or attorneys within ninety (90) days from the filing hereof, provided that defendant shall have thirty (30) days in which to complete the taking of his testimony after plaintiff has completed the taking of her testimony before said Edwards. Said testimony may be taken at such particular times and dates as may be agreed upon by said parties, their agents, solicitors, or attorneys, or of which at least

59 5 days' notice shall be given to the opposite party.

A. H. GARLAND,
Attorney General of the United States, Solicitor for Plaintiff,
By TRENMOR COFFIN,
Attorney for the United States in and for the District of Nevada.
T. W. HEALY,
HENRY K. MITCHELL,
Defendant's Att'ys.

JAMES D. TORREYSON,
ABBETT & FULLER, AND
CURTIS & BURDETT,
Of Counsel.

Carson, Nev., Oct. 19th, 1885.

(Endorsed :) In U. S. cir. c't, ninth circuit, dist. of Nevada. United States, pl'ff, *vs.* Joseph T. Williams, def't. Stipulation to take testimony in Carson City, Nevada. Filed Oct. 23, 1885. T. J. Edwards, clerk.

60 *Stipulation for Taking Testimony in Washington.*

In the Circuit Court of the United States, Ninth Circuit and District of Nevada.

UNITED STATES, Plaintiff,
vs.
JOSEPH T. WILLIAMS, Defendant.

Stipulation.

It is hereby stipulated and agreed by and between the parties to the above-entitled suit that either of said parties may take testimony to be used in said action before John B. Thompson, of Washington, D. C., upon oral interrogatories to be propounded to witnesses before him by said parties or their agents, solicitors, or attorneys at any time within ninety (90) days after the receipt of a commission to take such testimony by said John B. Thompson and at such particular times and dates as may be agreed upon or noticed by
61 the Attorney General of the United States or some one acting under his instructions and authority on behalf of plaintiff and E. C. Ford, of Washington, D. C., attorney for defendant, acting in behalf of defendant, or any other attorney or agent for defendant, provided that defendant shall have thirty (30) days in which to complete the taking of *their* testimony after the taking of all of plaintiff's testimony.

And it is further stipulated and agreed, the above-named court or one of the judges thereof assenting, that a commission to take said testimony may issue to said John B. Thompson.

A. H. GARLAND,
Attorney General of the United States, Solicitor for Plaintiff,
By TRENMOR COFFIN,
Attorney for the United States in and for the District of Nevada.
T. W. HEALY,
HENRY K. MITCHELL,
Defendant's Att'ys.

JAMES D. TORREYSON,
ABBETT & FULLER, AND
CURTIS & BURDETT,
Of Counsel.

Carson, Nev., Oct. 19th, 1885.

(Endorsed :) U. S. circuit court, ninth circuit, district of Nevada. The United States *vs.* Jos. T. Williams. Stipulation to take testimony in Washington, D. C. Filed Oct. 23, 1885. T. J. Edwards, clerk.

62 *Order App't'g Examiner.*

In United States Circuit Court, Ninth Circuit and District of Nevada.

THE UNITED STATES, Complainant,
vs.
JOSEPH T. WILLIAMS, Defendant. } In Equity.

By virtue of the authority in me vested by the said circuit court and in pursuance of the written stipulation of the solicitors for the respective parties it is hereby ordered that John B. Thompson, Esq., of the city of Washington, D. C., be, and he is, appointed special examiner or commissioner to take and report to this court the testimony of such witnesses as may be produced by either party to this action.

[L. S.] Given under my hand and the seal of said circuit court this 23d of October, 1885.

T. J. EDWARDS,
Clerk U. S. Circuit Court, Dist. Nevada.

(Endorsed:) U. S. cir. court, dist. Nevada. United States *v.* J. T. Williams. Order appointing commissioner. Filed October 23, 1885. T. J. Edwards, clerk.

63 *Affidavit for Enlargement of Time.*

In U. S. Circuit Court, 9th Circuit, District of Nevada.

THE UNITED STATES, Plaintiff,
vs.
JOSEPH T. WILLIAMS, Def't.

UNITED STATES, *Dist. of Nev.*, } *ss:*

TRENMOR COFFIN, being first duly sworn, doth depose and say that he is the attorney for the United States in and for the district of Nevada and in said cause; that the three months' time allowed by equity rule No. 69 for taking testimony in said cause expires
64 on or about Jan'y 23, 1886; that the testimony of J. W. Adams, Governor of the State of Nevada, and of C. S. Preble, surveyor general and State land register of the State of Nevada, is necessary to be taken in said cause on behalf of the United States; that said C. S. Preble has been absent from the State of Nevada for one month and is not expected to return for some weeks to come; that Gov. Adams has been absent from the State for five weeks, and for the reasons above set forth plaintiff has been unable to take the testimony of either of said witnesses.

Wherefore plaintiff, by affiant, her attorney, prays that the time for taking the testimony in said cause be extended to and including the 25th day of February, A. D. 1886.

TRENMOR COFFIN.

Subscribed and sworn to before me this 13th day of January, 1886.

T. J. EDWARDS,
Commissioner U. S. Cir. Court, Dist. Nevada.

(Endorsed:) In U. S. circuit court, 9 circuit, district of Nevada. The United States *vs.* Jos. T. Williams. Affidavit for extension of time to take testimony. Filed Jan'y 16, 1886. T. J. Edwards, clerk.

65 *Order Enlarging Time.*

In U. S. Circuit Court, 9th Circuit, District of Nevada.

THE UNITED STATES, Plaintiff,
vs.
J. T. WILLIAMS, Defendant.

Upon reading and filing the affidavit of Trenmor Coffin, plaintiff's attorney in the above-entitled cause, and it appearing therefrom that a proper cause exists, it is hereby ordered that the time in which the testimony in said cause may be taken on behalf of plaintiff be, and the same is hereby, extended to and including the 25th day of February, A. D. 1886.

SABIN, *Judge.*

Dated Jan'y 15th, 1886.

(Endorsed:) In U. S. circuit court, 9th circuit, district of Nevada. The United States *vs.* J. T. Williams. Order extending time for taking testimony. Filed Jan'y 16, 1886. T. J. Edwards, clerk.

66 *Affidavit.*

In the Circuit Court of the United States, Ninth Circuit and District of Nevada.

THE UNITED STATES OF AMERICA, Complainant,
vs.
JOSEPH T. WILLIAMS, Defendant. } In Equity.

To the judges of the circuit court of the United States, ninth circuit and district of Nevada:

T. W. HEALY, being first duly sworn, on oath deposes and says that he is the solicitor of Joseph T. Williams, the defendant in the above-entitled cause; that on the nineteenth day of October, A. D. 1885, he entered into a stipulation with Trenmor Coffin, Esq., and James D. Torreyson, Esq., respectively solicitor and of counsel for complainant, wherein it was stipulated and agreed that either party thereto may take testimony to be used in said suit before T. J. Edwards, a commissioner of said court, at Carson City, Nevada,
67 upon oral interrogatories to be propounded to witnesses before him by their agents, solicitors, or attorneys within ninety (90) days from the filing hereof, provided that defendant shall have thirty (30) days in which to complete the taking of his testimony

after plaintiff has completed the taking of her testimony before said "Edwards"; that said stipulation was filed October twenty-third, A. D. 1885; that affiant is informed by the clerk of the court (T. J. Edwards, Esq.) that the time named in said stipulation has, upon the request of plaintiff's solicitor, been extended by order of the court until the twenty-fifth day of February, A. D. 1886; that in pursuance of said stipulation the plaintiff commenced taking testimony on or about the fifth instant and adjourned the 8th inst. the further taking of testimony until February 20th, A. D. 1886; that the defendant's witnesses live at a distance, some of them in Nye county, Nevada, at points remote from railroad communication, and defendant will be unable to obtain such testimony within the said extension of time, to wit, to February 25th, A. D. 1886; that from the 20th to the 25th day of February, 1886, is not sufficient time to secure the presence of witnesses and obtain their
68 testimony; that the defendant cannot safely proceed to the trial of cause without such testimony and the opportunity to rebut the testimony of complainant; that such testimony is necessary to the proper presentation of the case on part of defendant and might subserve the end of aiding the court in the proper adjudication of the case at bar.

Wherefore defendant asks that the time may be extended by an order of the honorable court to the twenty-fifth (25th) day of March, A. D. 1886, for the taking of the testimony on part of the defendant herein; that the extension of time prayed for will be in conformity with the intention of the stipulation, to wit, thirty days after the time allowed complainant in which to take its testimony.

T. W. HEALY.

Subscribed and sworn to before me February 10, 1886.

T. J. EDWARDS,
Com'r U. S. Circuit Court, 9th Circuit & Dist. of Nevada.

(Endorsed:) U. S. cir. court, dist. Nevada. United States *v.* J. T. Williams. Affidavit for further time to take def't's testimony. Filed Feb'y 15, 1886. T. J. Edwards, clerk.

69 *Order Enlarging Time for Def't.*

In Circuit Court of the United States, 9th Circuit, District of Nevada.

THE UNITED STATES
v.
J. T. WILLIAMS. } In Equity.

Upon reading the affidavit of T. W. Healy, Esq., and good cause appearing therefor, it is hereby ordered that the defendant in above cause have until the 25th day of March, 1886, in which to take his testimony in the above cause, and that the time designated in the sixty-ninth equity rule for the taking of testimony be, and the same is hereby, extended so as to include the said 25th day of March.

Feb'y 13th, 1886.

GEO. M. SABIN, *Judge.*

Endorsed: U. S. cir. court, dist. Nevada. United States *vs.* J. T. Williams. Order extending time to take defendant's testimony. Filed Feb'y 15, 1886. T. J. Edwards, clerk.

70 *Amended Bill.*

In the Circuit Court of the United States, Ninth Circuit and District of Nevada.

THE UNITED STATES OF AMERICA, Plaintiff
vs.
JOSEPH T. WILLIAMS, Defendant.

To the judges of the circuit court of the United States, ninth circuit and district of Nevada:

The United States of America, by A. H. Garland, Attorney General of the United States, and Trenmor Coffin, attorney for the United States *and* and for the district of Nevada, brings this bill against Joseph T. Williams, a citizen of the State of Nevada, and thereupon your orator complains and says—

That on or about the 19th day of May, 1879, said Joseph T. Williams made a desert-land entry at plaintiff's district land office at Eureka, Nevada, for two hundred and forty acres of land, which was known as desert-land entry No. 158.

That on the 26th day of July, 1879, said Williams executed and delivered a deed to the New Philadelphia Silver Mining Company of a portion of the land embraced within said desert-land entry, to wit, eighty acres thereof, being the east half of southeast quarter of section 33, township 8 north, range 50 east, Mt. Diablo
71 meridian, in said district, said land being situated in Nye county, State of Nevada, and thereupon received the sum of five thousand dollars therefor from said company; that said company immediately thereafter erected a quartz mill thereon; that three years after the making of said desert-land entry, to wit, May 20, 1882, said Williams made and executed a written relinquishment of said desert-land entry to the United States, bearing date that day, and thereupon, on May 20, 1882, he made an application in writing to the register of the land office of the State of Nevada, as hereinafter set forth, which said application was filed May 22, 1882, in the office of said register of the State land office of Nevada, to purchase one hundred and sixty acres of land, a portion of the land embraced in said desert-land entry, and being the said eighty acres above described, and also eighty acres adjoining the same, to wit, the west half of the southwest quarter of section 34, township aforesaid; that on the 9th day of June, 1882, he filed said relinquishment bearing date the 20th day of May, 1882, in the local land office of plaintiff at Eureka, Nevada, from which office it was forwarded to the General Land Office, at Washington, D. C., for action thereon; that on July 29, 1882, the State of Nevada executed an application of that date for the said one hundred and sixty acres, a part of said desert-land entry as aforesaid; that on August 4, 1882,

the Commissioner of the General Land Office, at Washington, ordered said desert-land entry to be cancelled; that said order of cancellation was received in Eureka at the local land office August 12, 1882, and said desert-land entry was actually cancelled of record at that office on that day; that on the 14th day of August, 1882, the application
72 of the State of Nevada for said one hundred and sixty acres of land, bearing date July 29, 1882, and which was based upon an application of Williams to the State of Nevada, dated May 20, 1882, and which was filed as aforesaid with the register of the land office of the State of Nevada May 22, 1882, was received by the local land office at Eureka, and thereupon, on said 14th day of August, 1882, the register of said local land office at Eureka notified the State authorities that they might include said tract of one hundred and sixty acres of land in their monthly list of selections for the month of August, 1882; that on or about September 2, 1882, the State of Nevada, through its proper officers and agents, selected a list of lands to be approved to the State of Nevada by plaintiff, acting through its proper officers and agents, under an act of Congress of June 16, 1880, entitled "An act to grant the State of Nevada lands in lieu of the sixteenth and thirty-sixth sections in said State," and presented said list at the local land office of plaintiff at Eureka, Nevada, on said second day of September, 1882, which list included said one hundred and sixty acres of land as aforesaid.

That in October, 1882, the register and receiver of the plaintiff's local land office at Eureka, Nevada, in the due course of the business of that office transmitted said list of lands selected by the State of Nevada, being said list No. 24, under said act of Congress of June 16, 1880, to plaintiff's General Land Office, at Washington, District of Columbia; that about the twelfth day of October, 1882, said list No. 24 was received at plaintiff's General Land Office, at Washington, District of Columbia, and that upon receipt as afore-
73 said it was duly filed and made of record in said General Land Office.

That the said list was, on its receipt at the General Land Office and at all times theretofore, without the signature or other attestation of any officer or agent of the State of Nevada and so remained, and was without signature or verification when thereafter, to wit, May 3, 1883, the lands therein listed were erroneously certified to the State of Nevada aforesaid, and so continued until on or about the twelfth day of September, 1883.

That said list of lands selected by the State of Nevada was designated as list No. 24, and embraced, with other lands, said two tracts of eighty acres hereinbefore particularly described.

That on May 5, 1883, the Secretary of the Interior of plaintiff, upon the certificate of the Commissioner of the General Land Office of plaintiff, at Washington, District of Columbia, approved the lands embraced in said list No. 24 to the State of Nevada, including said two tracts of eighty acres aforesaid.

That said Commissioner of the General Land Office certified that the lands embraced in said list No. 24 were open to such selection and free from conflict with other claims upon the belief that they

were so open to selection and so free from conflict; that said lands hereinbefore described were not in fact so open to selection to the State of Nevada and were not so free from conflict with other claims, and that said action of the Commissioner of the General Land Office of plaintiff was induced either by the fraudulent action
74 and erasure of records by some person whose name is unknown to plaintiff acting in the interest of said Williams, defendant, as hereinafter set forth, or by reason of the mistake, inadvertence, or misadventure of some officer or employee of plaintiff, as hereinafter set forth.

That the facts and circumstances under which said lands were so certified and approved and the fraudulent acts or mistake, inadvertence, and misadventure which induced said certification in addition to those hereinbefore set forth are as follows, to wit:

That prior to said filing of said list No. 24, to wit, on the sixth day of September, 1882, Franz O. Matthiessen and Lebbeus B. Ward, who had theretofore acquired title by purchase to said eighty acres of land, being the east half of southeast quarter of section 33, township 8 north, range 50 east, Mt. Diablo meridian, acting by their attorneys, filed in the General Land Office of plaintiff, at Washington, District of Columbia, an application for the reinstatement of said desert-land entry No. 158, together with a protest against so much of the aforementioned selection of lands by the State of Nevada contained in list No. 24 as embraced the above-described eighty-acre tract to which they had acquired title as aforesaid; and the attorneys of said parties also applied to the Commissioner of the General Land Office for a hearing, stating the rights claimed by said
75 parties, in the letter of February 21st, 1882, claiming to have derived an interest in said lands by purchase from said Williams through intermediate parties, who had expended more than fifty thousand dollars in the erection of a stamp quartz mill thereon.

That on or about the eighth day of January, A. D. 1883, Franz O. Matthiessen and Lebbeus B. Ward, being duly qualified and authorized in that regard and being then and there the owners and in actual possession and control of a certain quartz mill and reduction works, which said mill was erected and standing on, and for more than two years prior to said date had been so erected and standing on, the lands hereinbefore described, to wit, on the east half of southeast quarter of section 33 and the west half of southwest quarter of section 34, township 8 north, range 50 east, Mt. Diablo meridian, Nevada, made their application at the plaintiff's proper land office, at Eureka, Nevada, to enter as a mill site and for a patent therefor five acres of land, being a part of the lands and two tracts last above described and a part of the lands embraced in the original desert-land entry No. 158 of defendant Williams, and including the said quartz mill, reduction works, and improvements incident thereto; that the said application to enter was by the register and receiver of plaintiff's land office at Eureka rejected for the reason that the land applied for for such mill site was embraced in said selection of the State of Nevada in said list No. 24, filed in said local land office at Eureka

September 2, 1882; that from the decision of said register and receiver rejecting said application for a patent for a mill site said Matthiessen and Ward duly appealed according to law on the same day upon
76 which said decision was made to the Commissioner of the General Land Office of plaintiff, at Washington, District of Columbia, and said application for a patent for a mill site and the appeal from said decision rejecting it and the accompanying papers constituting the said application rejecting said appeal were transmitted by said register and receiver to said Commissioner of plaintiff's General Land Office, at Washington, District of Columbia, on January 10th, 1883, and were received by said Commissioner on January 18th, 1883, and were thereupon filed and made of record therein, and the said mill-site application thereupon became and continued to be a pending claim adverse to the claim of the State of Nevada and to any claim made or pretended to be made to the said land; that at the time the said mill-site application was received at and in the plaintiff's General Land Office the said list No. 24 remained on file and of record, but without action or decision upon or as to any of the tracts embraced therein.

That upon receipt by the said Commissioner of plaintiff's General Land Office of notice of said application for a patent for a mill site adverse to the claim and selection of the State of Nevada, being said list No. 24, in so far as it concerned the lands herein particularly described, said Commissioner caused a note of the conflicting claim to be made in pencil on the margin of said list No. 24 opposite the said *the* tracts in controversy of eighty acres each, hereinbefore particularly described, by writing the words "mill site" on the margin of said list No. 24.

77 That this was and is the customary way, according to the usual and regular method in plaintiff's General Land Office, of denoting the existence of a claim adverse to a State selection, and such note operated as a suspension of action upon said State selection until the adverse claim of said application for a patent for a mill site could be disposed of in the due course of business of said General Land Office.

That — February 21, 1883, the said Commissioner of plaintiff's General Land Office denied the said application of September 6, 1882, of said Franz O. Matthiessen and Lebbeus B. Ward for the reinstatement of said desert-land entry, and in making said decision said, in relation to the accompanying protest against the State of Nevada's selection contained in list No. 24, so far as it related to the lands hereinbefore specifically described, that "the question of the validity of the State selection will be determined in due course of action thereon by this office."

That the work in the plaintiff's General Land Office, at Washington, is, in the necessary dispatch of the public business, distributed among what are known as divisions, each division consisting of an officer or clerk called a chief of division and a number of other clerks; that among the said divisions in that office there for many years past has been and now is one known or designated as the pre-emption division and another known or designated as the min-

eral division; that since the passage of the act of Congress approved June 16, 1880, hereinbefore referred to, the said pre-emption division has been charged, under the rules and regulations of the
78 said office, with the duty, under the direction, supervision, and control of the Commissioner of the General Land Office, of examining, passing upon, and adjusting selections of land made by the State of Nevada under said act of Congress, and that since the passage of the act of Congress providing for the issuance of patents on mill-site claims or applications the said mineral division in the General Land Office has, under the rules and regulations of that office, been charged with the duty, under the direction, supervision, and control of said Commissioner, of examining and passing upon applications for patents for mill-site claims.

That list No. 24 of the selection of lands made by the State of Nevada, hereinbefore referred to, was, upon its receipt in the plaintiff's General Land Office, placed in the custody and charge of the said pre-emption division, and the application of F. O. Matthiessen and L. B. Ward for a patent for a mill site, before referred to in this bill, was, upon its receipt in said General Land Office, referred to and placed in the custody and charge of said mineral division of that office.

That shortly after the receipt at said General Land Office of the application of Matthiessen and Ward for a patent for said mill site, to wit, about the 24th day of February, 1883, the then Commissioner of plaintiff's General Land Office, in addition to causing the words "mill site" to be written on the margin of said list No. 24 opposite to the tracts aforesaid, as hereinbefore stated, ordered and specifically directed the proper officers and clerks charged with the
79 duty of examining and passing upon the said State selections and of examining and passing upon the said mill-site application that when the said conflicting application, to wit, said list No. 24, and the mill-site application should be reached for examination they should be taken up and considered and reported for his action thereon as being and constituting one cause and matter.

The plaintiff further avers that thereafter, to wit, on the 3d day of May, 1883, the said application for patent on the mill site aforesaid being then and there present on the files of and pending and undecided in the said General Land Office, the officers or clerks of the pre-emption division of said General Land Office whose duty it was to proceed with the examination of the matter, contrary to law, against the rules, regulations, and practice of the said office, and in disregard of the special instructions of the Commissioner of that office, proceeded to the consideration and determination of the application of the said State, as evidenced by the said unsigned list No. 24, and thereupon, without consideration, examination, decision, or reference whatever to the then pending and undecided mill-site application of Matthiessen and Ward aforesaid, prepared and made out a "clear list," so called, in favor of the State of Nevada of the tracts of land inuring to the said State, and, having, among other tracts, embraced in the said clear list, included therein by mistake, error, and inadvertence, and contrary to the very truth of the matter,

the lands embraced by and included in the said application of Matthiessen and Ward, thereupon endorsed upon the said clear
80 list a certificate that the tracts of land therein embraced had been carefully examined and were found to be free from conflicts and to inure to the State of Nevada. Thereupon the said clear list so wrongfully made out and erroneously including the said east half of the southeast quarter of section 33 and the west half of the southwest quarter of section 34, township 8 north, range 50 east, was laid before the Commissioner of the plaintiff's General Land Office and the plaintiff's Secretary of the Interior for their action thereon; that the said Commissioner and the said Secretary, relying on the certificate so endorsed by the said officers and clerks on said "clear list," so called, and upon the belief that all proper and necessary examinations had been made, and that the regulations and instructions in that behalf given had been observed and complied with, affixed their signatures to the said clear list of selections, whereby the said list became in form the conveyance of the United States to the said State of Nevada of the several tracts of land contained in the said list and, among others, the tract of land described in the mill-site application of Matthiessen and Ward upon which the quartz mill, buildings, and other improvements erected and standing had been placed; that thereupon said "clear list" was delivered to the State of Nevada.

And the plaintiff further charges and avers that the said certificate dated May 3, 1883, was prepared and presented to the Commissioner of plaintiff's said General Land Office for his action in disregard of his, the said Commissioner's, express directions and through the negligence of the clerk or clerks in the pre-emption division
81 of the said General Land Office to faithfully and properly discharge their duties in conjunction with the matters herein referred to and as the result of carelessness and disobedience of orders on the part of said clerk or clerks.

And the plaintiff further avers that neither on the third day of May, 1883, nor upon any other day had or has the application of said Matthiessen and Ward for a patent on their mill-site location been acted upon or decided by the Commissioner of plaintiff's General Land Office; and the plaintiff avers that said application for a patent for such mill-site claim was, under the law and the practice prevailing in said General Land Office, such an one as entitled the claimants to have their rights passed upon and determined by the said Commissioner of the plaintiff's General Land Office before the legal titles to the lands claimed by them should be passed out of the United States to any party claiming adversely to mill-site claimants.

Wherefore the plaintiff says and avers that the signature and certification of the plaintiff's Commissioner of the General Land Office and the signature and certification of the plaintiff's Secretary of the Department of the Interior were made and obtained to and upon the said "clear list" by mistake, inadvertence, and misadventure, and that the said clear list was upon the day of its date and ever since has remained and now is false and fraudulent, particularly as to the east half of the southeast quarter of section 33 and the west

half of the southwest quarter of section 34, township 8 north, range 50 east, in the said State of Nevada.

82 That while said State selection list No. 24 was in plaintiff's General Land Office and before the said Commissioner thereof, at Washington, District of Columbia, said list No. 24 was subject to inspection and was inspected by the parties in interest for the State of Nevada or said Williams and their agents and attorneys, and before said list No. 24 was taken up for action by said Commissioner of plaintiff's General Land Office the said note and words "mill site" on the margin of said list were fraudulently erased or partially erased by some person, whose name is unknown to the officers and agents of plaintiff, for the purpose and with the fraudulent intention of obtaining action upon said State selection embraced in said list No. 24 favorable to said State of Nevada, and thus aid the application of said Williams to said State for said one hundred and sixty acres of land.

That when said list No. 24 was taken up for action and certification by said Commissioner of plaintiff's General Land Office said lands herein specifically described were by mistake, together with other lands embraced in said list, certified and approved to said State of Nevada by reason of said fraudulent erasure of said marginal note of conflicting claim made upon the margin of said list No. 24 as aforesaid or by reason of the mistake, inadvertence, or misadventure as aforesaid of some officer or employee of plaintiff as aforesaid.

That in December, 1883, the matter of said mill-site claim was taken up for action in plaintiff's General Land Office in con-

83 nection with said selection of the State of Nevada of the lands hereinbefore described embraced in said list No. 24, when plaintiff, through its officers and agents, for the first time ascertained and discovered that said land had been approved to the State of Nevada, as above set forth, and the fraud or mistake, inadvertence or misadventure, as aforesaid by which said approval had been secured.

That on May 20, 1882, said Joseph T. Williams, defendant, made application, as hereinbefore stated, to the State of Nevada for the purchase of the east half of the southeast quarter of section 33 and the west half of the southwest quarter of section 34 of township 8 north of range 50 east; and on February 2, 1884, the State of Nevada, in compliance with said application, acting by and through its officers and agents, entered into a written contract with said defendant, Joseph T. Williams, a copy of which said contract is hereto attached, marked "Exhibit A," and is hereby referred to and made a part hereof, for the sale to said Williams, according to the laws of the State of Nevada, of the said last-described lands, upon which said mill site is situated, and to issue a patent therefor to him when the whole of the purchase price thereof shall be paid to said State.

That by reason of the said application of said defendant Williams to purchase the said lands of the State of Nevada and by reason of said contract of said State to sell and patent said lands to said de-

fendant Williams the said State of Nevada and its officers and agents refuse to return said State selection list No. 24 to the General Land Office of plaintiff, at Washington, District of Columbia, for the correction of said mistake in the certification and ap-
84 proval of the lands herein particularly described to the State of Nevada when requested so to do by the Commissioner of plaintiff's General Land Office, as hereinafter set forth.

That the value of the land particularly described herein and in controversy is more than five hundred dollars, and by reason of the improvements and erection of a quartz mill thereon by the said applicants for a mill site, Matthiessen and Ward, or the parties from whom they derive title said land and improvements are of the value of fifty thousand dollars.

That said land, mill site, and improvements erected thereon by said Matthiessen and Ward or the parties from whom they derive title, and at their expense, will pass to the defendant Williams or to Henry B. Campbell, to whom said defendant Williams had made a deed of the tract of land embracing the five-acre mill site in controversy, with about one hundred acres of the one hundred and sixty acres of land aforesaid, which deed bears date August 9, 1875, and is recorded in Book H of Deeds, pages 553 and 554, Nye county, Nevada Records, by virtue of his said contract with the said State of Nevada, unless said contract and any other similar contract that he has made or may hereafter make shall be annulled and set aside.

That immediately upon the discovery of the erroneous certification of said two tracts of land, as herein alleged, by the Commissioner of the General Land Office of plaintiff said Commissioner, on December 11, 1883, notified the Governor of the State of Nevada by telegraph that the two said tracts of land had been erro-
85 neously included in said clear or approved list and requested him to cause the said approved list to be returned to plaintiff's General Land Office in order that the said erroneous certification might be withdrawn; that the Governor of the State of Nevada replied, under date of December 15, 1883, that the register of the State land office, being advised thereto by the attorney general of said State, would proceed to patent the tracts aforesaid to the defendant Williams unless restrained by order of court; that thereupon plaintiff's Secretary of the Interior telegraphed to said Governor, on December 15, 1883, his intention to have proceedings commenced to set aside the certification of the aforesaid tracts of land unless the said list could be returned to the plaintiff's General Land Office, to which answer was made, December 18, 1883, by letter from said Governor that said tracts of land had been applied for and contracted to the defendant Williams, and said Governor thereupon declined to return the said clear or approved list to the plaintiff's General Land Office for correction.

That the said defendant Williams, before entering into said contract with said State of Nevada of date February 2, 1884, had full knowledge of the claim and demand of said plaintiff and of the determination of said plaintiff to annul and vacate the certification of said list No. 24 so far as it affected the land hereinbefore described

and contracted for by said defendant Williams with said State of Nevada.

That said defendant Williams entered into said contract with said State of Nevada of date February 2, 1884, with full knowl-
86 edge of the fraud alleged hereinbefore and with full knowledge of the false and fraudulent manner by which the certification of said list to said State of Nevada had been procured and with the full knowledge of the claim and determination of said plaintiff to annul and vacate the certification of said list No. 24 so far as it affected the land so contracted for by said Williams with said State of Nevada of date February 2, 1884.

The plaintiff further alleges that under the act of Congress of June 16, 1880, hereinbefore referred to, the State of Nevada was not entitled to select that portion of the one hundred and sixty acres of land on which was erected the mill and improvements which are situated on the mill site applied for by said Matthiessen and Ward, as hereinbefore set forth; that said lands embraced within said mill site were not unappropriated public lands, being at the date of the passage of said act, June 16, 1880, in the possession of the New Philadelphia Silver Mining Company, and having said mill and improvements thereon, and the said defendant, Williams, well knew at the time he applied to the State of Nevada to purchase said lands, to wit, May 20, 1882, that the same had been occupied as private lands prior to June 16, 1880, and ever since that date, and that they had been so occupied under and by virtue of the deed which he had given to said New Philadelphia Silver Mining Company, as aforesaid, July 26, 1879, and under and by virtue of which and relying on the validity thereof said improvements had been placed upon said lands; and the plaintiff claims that as to so much of list No. 24 as embraces said mill site the same was void by reason of the attempted selection of said land by the State of
87 Nevada not being within the terms of the act of Congress of June 16, 1880, and because of the knowledge of said Williams at the time he applied for the purchase of said lands, May 20, 1882, that the same were so occupied as aforesaid, and that the application of the State of Nevada was in the interest and for the purpose of transferring said lands to said Williams.

That plaintiff further alleges that the one hundred and sixty acres of land selected by the State of Nevada and for which application was made to said State by said Williams, being a part of said desert-land entry No. 158, did not come within the terms of said act of Congress of June 16, 1880, because at the date of said act said desert-land entry was uncancelled and existed of record as an appropriation of said lands upon the books of the Land Department, both at Eureka, in the State of Nevada, and also at the General Land Office, in the city of Washington, District of Columbia, and that said land as to said one hundred and sixty acres was not at the date of said act unappropriated public land, but was in fact appropriated by virtue of said desert-land entry, as appears by the books of the land office, and said Williams was aware of this fact, he having made the application therefor and it being still in his name at the

date of his application to the State of Nevada, May 20, 1882, and the plaintiff therefore claims that said attempted selection of said lands by the State of Nevada for the purpose of transferring the same to said Williams or to any other party was without warrant of authority in law.

88 Wherefore plaintiff prays the judgment and decree of this court adjudging that the certification and approval to the State of Nevada of the selection of lands described in said "clear list," which was founded on said list No. 24, as hereinbefore set forth, in so far as the same embraces the lands hereinbefore specifically described, was and is null and void and canceling and setting aside said contract between said defendant Williams and the State of Nevada for the sale by said State to Williams of said lands, and that said defendant Williams have and take nothing under or by virtue of said contract in order that said clear list may be returned by the State of Nevada and its officers and agents into the General Land Office of plaintiff for the correction of the mistake hereinbefore set forth, and in order that the conflict between the selection of the State of Nevada in list No. 24 and the said application for a patent for a mill site may be determined and adjusted in plaintiff's General Land Office according to law; and that the defendant be perpetually enjoined against claiming any right, title, or interest under the certification of the lands in question to the State of Nevada contained in said "clear list," which was founded upon said list No. 24; and that he be perpetually enjoined against making any claim under any contract with the State of Nevada in reference to said lands or any part thereof.

And the plaintiff further prays that the said defendant be directed to deliver up to the State of Nevada to be cancelled all contracts or agreements that may give him or appear to entitle him to any right, title, or interest in said land in controversy the title to which

89 is derived from or under said list No. 24, and that he be decreed to execute and deliver to the State of Nevada a formal and proper instrument, which can be recorded, by which he shall convey and release to the State of Nevada any and all rights, claim, or title he may have or claim to have in said land in controversy.

And for such other and further relief as in the premises to this honorable court may seem just and equitable and for its costs of suit.

A. H. GARLAND,
Attorney General of the United States,
By TRENMOR COFFIN,
Attorney for the United States in and for the District of Nevada.

JAMES D. TORREYSON,
ABETT & FULLER, AND
CURTIS & BURDETT,
Of Counsel.

90 EXHIBIT A.

This article of agreement, made and entered into this second day of February, 1884, by and between the State of Nevada, acting through C. S. Preble, surveyor general and *ex officio* register of the State land office of said State, party of the first part, and J. T. Williams, of the county of Nye, in the State of Nevada, party of the second part, witnesseth:

That the party of the first part, for and in consideration of one dollar and twenty-five cents ($1.25) per acre, in good and lawful money of the United States, to be paid, as hereinafter expressed, by the party of the second part, doth agree to convey by good and sufficient patent in fee simple to the party of the second part the following-described lands, to wit:

Description—part of section.	Section.	Township.		Range.
		North.	South.	East.
E. ½ of S. E. ¼	33	8		50
W. ½ of S. W. ¼	34	8		50

Mt. Diablo meridian, containing one hundred and sixty (160) acres. In consideration of which the party of the second part, for himself, his heirs or assigns, doth agree to pay to the State of Nevada the sum of one dollar and twenty-five cents ($1.25) per acre, as above stated, at the times and in the manner mentioned in this article, to wit: One-fifth (⅕) of the amount at the time of the making of this contract and the balance in nine (9) equal annual installments, with interest at the rate of ten (10) per cent. per annum, payable annually, upon all deferred installments, as is provided in section nine (9) of an act entitled "An act to provide for the selection and sale of lands that have been or may hereafter be granted by the United States to the State of Nevada," approved March 5, 1873, and the acts amendatory thereof and supplementary thereto.

91 And it is hereby further provided and agreed that the party of the second part, his heirs or assigns, may at any time prior to the maturity of this contract make full payment for the land described in this article and receive from the State of Nevada a patent for the same, issued in the name of the applicant.

This contract is made upon the express conditions, viz., that if the said J. T. Williams, party of the second part, shall fail to pay the principal sum herein specified or the interest thereon or any part of the same according to the terms of this agreement, as is herein stipulated, then the land herein described shall immediately and unconditionally revert to the State of Nevada and be thereafter

subject to sale in the manner and under the same conditions as though this contract of sale had not been made.

Witness our hands and seals this second day of February, A. D. 1884.

C. S. PREBLE, [SEAL.]
Surveyor General and ex Officio Land Register.
JOS. T. WILLIAMS. [SEAL.]

Witness-:
A. D. ROCK.
J. C. POWELL.

NOTE.—The first payment ($40.00) on this contract was made May 22d, 1882, as shown by receipt No. 166. The second payment will be due one year from the date of this contract. Full payment may be made at any time.

92 Endorsed: In U. S. circuit court, 9th circuit, district of Nevada. United States, pl'ff, *vs.* J. T. Williams, def'd't. Amended bill of complaint. Filed M'ch 17, 1886. T. J. Edwards, clerk. A. H. Garland, Att'y Gen., and Trenmor Coffin, dist. att'y, for pl'ff. J. D. Torreyson, Curtis & Burdett, & Abbott & Fuller, of counsel.

93 *Order Extending Time for Def't's Testimony.*

In the Circuit Court of the United States, 9th Circuit, District of Nevada.

THE UNITED STATES
v.
JOS. T. WILLIAMS. } In Equity.

Upon good cause appearing therefor, it is hereby ordered that the defendant in the above cause have until the first day of June, 1886, in which to take his testimony in the above cause, and that the time designated in the sixty-ninth equity rule for the taking of testimony be, and the same is hereby, extended so as to include the said first day of June.

SABIN, *Judge.*

Endorsed: U. S. cir. court, dist. Nevada. United States *vs.* J. T. Williams. Order extending time to take defendant's testimony. Filed M'ch 20, 1886. T. J. Edwards, clerk.

94 *Order Enlarging Time for Complainant.*

In the Circuit Court of the United States, Ninth Circuit and District of Nevada.

UNITED STATES, Plaintiff,
v.
J. T. WILLIAMS, Defendant. } Order Granting Time.

Upon good cause shown, it is hereby ordered that plaintiff have

60 days from and after the 31st day of May in which to complete the cross-examination of defendant's witnesses and in which to take testimony in rebuttal in the above-entitled cause.

May 29th, 1886.

SABIN, *Judge.*

Endorsed: In the cir. court of the United States, ninth circ., dist. of Nev. United States, pl'ff, *vs.* J. T. Williams, def't. Order granting time. Filed June 1, 1886. T. J. Edwards, clerk.

95 *Notice—Leave to Amend Answer.*

In the United States Circuit Court, Ninth Circuit and District of Nevada.

UNITED STATES
vs.
J. T. WILLIAMS.

To A. H. Garland, U. S. Attorney General; Trenmor Coffin, U. S. district attorney; J. D. Torreyson, Curtis & Burdett, Abbett & Fuller, solicitors and of counsel for plaintiff:

GENTLEMEN: Please take notice that the above-named defendant will, through his solicitor and counsel, move the honorable court, on the next rule day or as soon thereafter as counsel can be heard, to be allowed to amend his answer to plaintiff's bill of complaint, so that it may conform to the evidence given before the U. S. commissioner, T. J. Edwards.

Carson, Nev., June 1st, 1886.

T. W. HEALY,
Solicitor for Defendant.

H. K. MITCHELL &
R. M. CLARKE, *Of Counsel.*

(Endorsed:) U. S. cir. court, dist. Nevada. United States *v.* Jos. T. Williams. Notice of motion to amend answer. Due service of the within acknowledged this first day of June, 1886, reserving all right of objections to same. J. D. Torreyson, of counsel. T. Coffin. Filed June 1, 1886. T. J. Edwards, clerk.

96 *Decree.*

In the Circuit Court of the United States, Ninth Circuit and District of Nevada.

THE UNITED STATES, Plaintiff,
vs.
J. T. WILLIAMS, Defendant.

The above-entitled cause came regularly on to be heard at the November term, A. D. 1886, of the circuit court. The same was argued by counsel and submitted to the court on the 9th of Novem-

ber, 1886, the same being a regular term day of said term of court; and the court having duly considered the evidence in said cause and the arguments of counsel and the law applicable in the premises, now, therefore, it is considered, ordered, and decreed that the certification and approval to the State of Nevada of clear list No. 2, which was founded on list No. 24 of the State of Nevada's selection of lands under and by virtue of an act of Congress entitled "An act to grant to the State of Nevada in lieu of the sixteenth and thirty-sixth sections in said State," approved June 16, 1880, in so
97 far as the same embraces the east half of the southeast quarter of section thirty-three and the west half of the southwest quarter of section thirty-four, all in township number eight north, range fifty (50) east, Mount Diablo base and meridian, was and is null and void, and the same is hereby set aside and cancelled, and that the contract between the State of Nevada and the said J. T. Williams, defendant herein, of date February 2d, 1884, for the sale of said lands by the State of Nevada to said J. T. Williams and all other contracts or agreements with the State of Nevada that may give him or appear to give him any right, title, or interest in said lands which is derived from, under, or through said clear list No. 2, based upon said list No. 24 of selections of lands by the State of Nevada, be, and the same are hereby, set aside and cancelled, and that said Williams have and take nothing under and by vertue of said contract or under and by virtue of any contract and agreement with the State of Nevada which may give or appear to give him any right, title, or interest in or to said lands which is derived from or through said list No. 24 or said clear list No. 2.

98 It is further considered, ordered, and decreed that the said defendant, Williams, be, and he is hereby, perpetually enjoined and restrained against claiming any right, title, or interest in or to said lands under said certification thereof to the State of Nevada or under any contract or agreement with the State of Nevada in reference to said lands or any part thereof.

It is hereby further considered, ordered, and decreed that the said defendant, J. T. Williams, deliver up to the State of Nevada to be cancelled all contracts or agreements that may give him or appear to entitle him to any right, title, or interest in or to said land above described, the title to which is derived from or under said list No. 24, or from or under said clear list No. 2 or the certification thereto, or from or under any listing or certification of said lands to the State of Nevada by the United States or by any officer or agent of the Government of the United States.

And it is further considered, ordered, and decreed that the defendant, J. T. Williams, execute and deliver to the State of Nevada, through its surveyor general and *ex officio* land register, a
99 formal and proper instrument, which can be recorded, by which he shall convey and release to the State of Nevada any and all right, claim, or title he may have or claim to have in or to the said land above described.

It is hereby further considered, ordered, and decreed that at the time of the selection of said lands by the State of Nevada said lands

were not subject to such selection and were not unappropriated non-mineral lands, but were appropriated and occupied as the mill site for a stamp quartz mill, said mill having been previously erected thereon, and that the certification of said lands to the State of Nevada was through fraud, inadvertence, or mistake and null and void, and that by reason of the premises there was no authority or jurisdiction in the officers or agents of the Government of the United States to certify and list said lands to the State of Nevada.

It is further considered, ordered, and decreed that plaintiff have and recover of and from said defendant, J. T. Williams, its costs of suit herein, taxed at $407.60, and that execution may issue therefor.

GEO. M. SABIN, *Judge.*

Dated November 26th, 1886.

Endorsed: In the U. S. cir. court, ninth circuit, district of Nevada. The United States, pl'ff, *vs.* J. T. Williams, def't. Decree in equity. Filed Nov. 26, 1886. T. J. Edwards, clerk.

100 *Service of Decree.*

In U. S. Circuit Court, 9th Circuit, District of Nevada.

UNITED STATES
vs.
J. T. WILLIAMS.

I hereby admit service by certified — of the decree this day rendered and entered in the above-entitled cause.

C. S. PREBLE,
Surveyor General and ex Officio State Land Register of the State.

Carson, Nev., Nov. 26, 1886.

(Endorsed:) In U. S. circuit court, 9th circuit, district of Nevada. United States *vs.* J. T. Williams. Acceptance of service of copy of decree by surveyor gen. of Nev. Filed Nov. 26, 1886. T. J. Edwards, clerk.

101 *Pl'ff's Cost Bill.*

In U. S. Circuit Court, 9th Circuit, District of Nevada.

UNITED STATES
vs.
J. T. WILLIAMS. } Memorandum of Plaintiff's Costs.

Clerk's costs	127 20
Special examiner, taking testimony in Washington, D. C.	70 00
Fees of U. S. Commissioner T. J. Edwards, taking testimony in Carson City, Nevada	115 40
U. S. district attorney's docket fee	20 00
U. S. district attorney's fees for 15 depositions taken and admitted in the case as evidence	75 00
Allowed and taxed at	$407 60

Nov. 27th, 1886.

T. J. EDWARDS, *Clerk.*

UNITED STATES OF AMERICA, } ss:
District of Nevada, }

Trenmor Coffin, being first duly sworn, doth depose and say that he is the attorney for the United States in and for the district of Nevada; that the above memorandum of costs and disbursements in said action and the items therein contained are correct, and that the disbursements have been necessarily incurred in said action.

102

TRENMOR COFFIN.

Subscribed and sworn to before me this 26th day of November, A. D. 1886.

T. J. EDWARDS,
Com'r U. S. Cir. Court, Dist. Nevada.

To J. T. Williams, defendant, and to T. W. Healy and R. M. Clarke, his att'ys in the above-entitled action:

You are hereby notified that plaintiff will move to tax the costs in said above-entitled cause, before T. J. Edwards, Esq., clerk of said court, at his office, in Carson City, Nevada, at 10 o'clock a. m. on Saturday, Nov. 26th, 1886. A memorandum of plaintiff's costs and disbursements is herewith served upon you.

Carson, Nevada, Nov. 26, 1886.

TRENMOR COFFIN,
U. S. Dist. Att'y.

Due service by copy admitted this 26th day of November, A. D. 1886.

ROB'T M. CLARKE,
Att'y for Defendant.

Endorsed: In U. S. circuit court, 9th circuit, district of Nevada. United States *vs.* J. T. Williams. Memorandum of plaintiff's costs. Filed Nov. 26, 1886. T. J. Edwards, clerk.

103 *Minutes of Court.*

In United States Circuit Court, Ninth Circuit and District of Nevada.

UNITED STATES, Complainant, }
v.
JOSEPH T. WILLIAMS, Defendant. }

Minutes of court, showing proceedings had in said cause.

UNITED STATES }
v.
J. T. WILLIAMS. }

APRIL 6TH, 1885.

Upon motion and by consent of counsel, ordered that the hearing of the demurrer herein be, and the same is hereby, continued until the 20th inst.

Demurrer Submitted.

UNITED STATES
v.
JOS. T. WILLIAMS.

APRIL 20TH, 1885.

The demurrer herein was this day argued and submitted by counsel for the respective parties and taken under advisement.

Order Overruling Demurrer.

UNITED STATES
v.
JOS. T. WILLIAMS.

APRIL 23D, 1885.

The demurrer in this cause having been regularly submitted
104 and duly considered by the court, it is now ordered that the same be, and is hereby, overruled, and that defendant have to and including the rule day in June next to answer the bill of complaint.

Order App't'g Special Examiner.

UNITED STATES
v.
J. T. WILLIAMS.

NOV'R 27, 1885.

On motion and by consent of solicitors for the parties hereto, it is ordered that A. L. Fitzgerald, Esq., of Eureka, Nevada, be, and he is hereby, appointed a special examiner to take and report testimony in said cause.

UNITED STATES
v.
J. T. WILLIAMS.

MARCH 16, 1886.

On motion of plaintiff's solicitors, it is ordered that they have leave to temporarily withdraw from the files and clerk's office the bill of complaint herein.

Order. Leave to File Amended Complaint.

UNITED STATES
v.
J. T. WILLIAMS.

MARCH 17, 1886.

On motion of complainant's solicitors, it is ordered that
105 leave be, and is hereby, granted to file an amended bill in this cause, and that defendant have twenty days to file his answer thereto.

Original Answer to Stand as to Am'd Bill.

THE UNITED STATES
v.
J. T. WILLIAMS.

MARCH 22, 1886.

On motion and by consent of solicitors herein, it is ordered that the answer on file shall be considered as the answer to the amended bill if defendant so desires.

Requiring Def't to Serve His Proposed Amendments.

UNITED STATES
v.
J. T. WILLIAMS.

JUNE 7TH, 1886.

In consideration of defendant's motion for leave to amend his answer, it is ordered that the proposed amendments be served upon the solicitors for complainant at or before four o'clock p. m. of to-morrow, and that the hearing of the motion be continued until Monday, the 14th inst.

106 *Motion to Amend Answer Denied.*

UNITED STATES
v.
J. T. WILLIAMS.

JUNE 14, 1886.

It appearing to the court that defendant has failed to file and serve the proposed amendments to his answer as required by the order of this court, it is ordered, on motion of solicitors for complainant, that said motion for leave to amend be, and the same is hereby, denied.

Publication of Testimony.

UNITED STATES
v.
J. T. WILLIAMS.

OCT. 4, 1886.

On motion of Mr. Torreyson, one of the complainant's solicitors, it is ordered that the testimony in this cause be published, and that each party be allowed to withdraw the same for the period of five days.

Setting Cause for Trial, &c.

UNITED STATES
v.
J. T. WILLIAMS.

NOV'R 1, 1886.

On motion of Mr. Coffin, solicitor for complainant, ordered that the

name of A. E. Cheney be entered of record as associate counsel for complainant.

107 It is further ordered that this cause be, and is hereby, set for trial on Monday, the 8th inst.

Trial.

UNITED STATES
v.
J. T. WILLIAMS.

NOV'R 8TH, 1886.

On motion of Mr. Healy, solicitor for defendant, ordered that the name of R. M. Clarke be entered as associate counsel for defendant.

The trial of the cause was then proceeded with, and, pending the argument thereof, court adjourned until the 9th inst., 10 o'clock a. m.

Submission of Cause.

UNITED STATES
v.
J. T. WILLIAMS.

NOV'R 9TH, 1886.

The trial of this cause was this day concluded by the solicitors for the respective parties, the matter finally submitted to the court, and by it taken under advisement.

Order for Decree.

UNITED STATES
v.
JOS. T. WILLIAMS.

NOV. 23D, 1886.

This cause having been regularly tried and submitted and
108 duly considered by the court, it is now ordered that a decree be entered herein pursuant to the prayer of the bill of complaint.

Order Allowing Appeal, &c.

UNITED STATES
v.
JOS. T. WILLIAMS.

NOV'R 27, 1886.

On motion of Mr. Healy, solicitor for defendant, it is ordered that an appeal herein to the Supreme Court of the United States be, and is hereby, allowed, and that defendant file a bond on appeal in the sum of twelve hundred dollars, to be approved by one of the judges of this court.

109 *Appearance of Def't.*

Appearance of defendant as entered in rule and order book, &c.

THE UNITED STATES
v.
J. T. WILLIAMS, Def't.

Upon filing written stipulation herein, ordered that the appearance of T. W. Healy, Esq., as solicitor for said defendant, be, and the same is hereby, entered, and that this cause be now docketed for the defendant.

Dec'r 23, 1885.

T. J. EDWARDS, *Clerk.*

Order for Hearing Exceptions.

UNITED STATES
v.
JOS. T. WILLIAMS.

Exceptions to the sufficiency of defendant's answer having been filed on the last rule day, and no amended answer having been filed, the said exceptions are hereby set down for argument the next rule day, to wit, the first Monday in September, before Hon. Geo. M. Sabin, judge.

TRENMOR COFFIN,
Solicitor for Plaintiff.

Tuesday, Aug. 4, 1885.

110 *Enrollment of Decree.*

In the United States Circuit Court for the Ninth Circuit and District of Nevada. November Term, 1886.

THE UNITED STATES, Complainant,
v.
JOSEPH T. WILLIAMS, Defendant.

The complainant filed its bill of complaint, which is hereto annexed, on the 18th day of December, A. D. 1884, against the said defendant. A subpœna to appear and answer in said cause was thereupon issued, returnable on the rule day in February, A. D. 1885, and was served personally, previous to the return day thereof, on the defendant.

The defendant appeared in said cause on the 27th day of January, 1885, by T. W. Healy, Esq., as his solicitor, and on the 14th day of February, 1885, the defendant filed his demurrer to the bill of complaint, which demurrer was overruled by the court and the defend-

ant required to file his answer in the cause on or before the
111 1st day of June, A. D. 1885. On the first day of June, 1885, the defendant filed his answer to said bill, which answer is hereto annexed.

On the 26th day of June, 1885, the complainant filed its exceptions to the said answer, which exceptions are hereto annexed, and on the 21st day of September, 1885, the exceptions were overruled by the court; which said last order is hereto annexed.

A replication to the answer was filed on the 22d day of September, 1885, which replication is hereto annexed.

That on the 1st day of November, 1886, the testimony, proofs, and exhibits referred to therein, as hereto annexed, were all duly filed.

On the 26th day of November, 1886, the said cause having been previously brought to a hearing, a final decree was made and entered therein in the words and figures following, to wit:

In the Circuit Court of the United States, Ninth Circuit and District of Nevada.

THE UNITED STATES, Plaintiff,
vs.
112 J. T. WILLIAMS, Defendant.

The above-entitled cause came regularly on to be heard at the November term, A. D. 1886, of the circuit court. The same was argued by counsel and submitted to the court on the 9th of November, 1886, the same being a regular term day of said term of court, and the court having duly considered the evidence in said cause and the arguments of counsel and the law applicable to the premises:

Now, therefore, it is considered, ordered, and decreed that the certification and approval to the State of Nevada of clear list No. 2, which was founded on list No. 24, of the State of Nevada's selection of lands under and by virtue of an act of Congress entitled "An act to grant to the State of Nevada in lieu of the sixteenth and thirty-sixth sections in said State," approved June 16th, 1880, in so far as the same embraces the east half of the southeast quarter of section thirty-three and the west half of the southwest quarter of
113 section thirty-four, all in township number eight north, range fifty (50) east, Mount Diablo base and meridian, was and is null and void and the same is hereby set aside and cancelled, and that the contract between the State of Nevada and the said J. T. Williams, defendant herein, of date February 2d, 1884, for the sale of said lands by the State of Nevada to said J. T. Williams and all other contracts or agreements with the State of Nevada that may give him or appear to give him any right, title, or interest in said lands which is derived from, under, or through said clear list No. 2, based upon said list No. 24, of selections of lands by the State of Nevada, be, and the same are hereby, set aside and cancelled, and that said Williams have and take nothing under and by virtue of said contract or under

and by virtue of any contract or agreement with the State of Nevada which may give or appear to give him any right, title, or interest in or to said lands which is derived from or through said list No. 24 or said clear list No. 2.

It is further considered, ordered, and decreed that the said
114 defendant, Williams, be, and he is hereby, perpetually enjoined and restrained against claiming any right, title, or interest in or to said lands under said certification thereof to the State of Nevada or under any contract or agreement with the State of Nevada in reference to said lands or any part thereof.

It is hereby further considered, ordered, and decreed that the said defendant, J. T. Williams, deliver up to the State of Nevada to be cancelled all contracts or agreements that may give him or appear to entitle him to any right, title, or interest in or to said lands above described, the title to which is derived from or under said list No. 24 or from or under said clear list No. 2 or the certification thereto or from or under any listing or certification of said lands to the State of Nevada by the United States or by any officer or agent of the Government of the United States.

And it is further considered, ordered, and decreed that the defendant, J. T. Williams, execute and deliver to the State of Nevada, through its surveyor general and *ex officio* land register, a formal and proper instrument which can be recorded, by which he
115 shall convey and release to the State of Nevada any and all right, claim, or title he may have or claim to have in or to the said land above described.

It is hereby further considered, ordered, and decreed that at the time of the selection of said lands by the State of Nevada said lands were not subject to such selection and were not unappropriated, nonmineral lands, but were appropriated and occupied as the mill site for a stamp quartz mill, said mill having been previously erected thereon, and that the certification of said lands to the State of Nevada was through fraud, inadvertence, or mistake and null and void, and that by reason of the premises there was no authority or jurisdiction in the officers or agents of the Government of the United States to certify and list said lands to the State of Nevada.

It is further considered, ordered, and decreed that plaintiff have and recover of and from said defendant, J. T. Williams, its costs of suit herein, taxed at $407.60, and that execution may issue therefor.

GEO. M. SABIN, *Judge.*

Dated November 26th, 1886.

116 Whereupon the said pleadings, proofs, orders, and final decree, and taxed costs, together with other papers in said cause, are duly annexed hereto, and this decree is duly signed, filed, and enrolled pursuant to the rules and practice of the court.

T. J. EDWARDS, *Clerk.*

(On the 17th day of March, 1886, the complainant, under leave of the court first had and obtained, filed its amended bill of complaint herein, which is also hereto annexed.)

Endorsed: U. S. circuit court, dist. Nevada. The United States *vs.* J. T. Williams. Equity. Enrollment of decree. Filed Nov. 26, 1886. T. J. Edwards, clerk.

117 *Plaintiff's Testimony* (*Washington*).

In the Circuit Court of the United States, Ninth Circuit and District of Nevada.

THE UNITED STATES, Plaintiff,
v.
JOSEPH T. WILLIAMS, Defendant. } In Equity.

Be it remembered that at an examination of witnesses begun and held on the tenth day of January, A. D. 1886, and continued from time to time by adjournment until the twenty-fifth day of February, A. D. 1886, within which time the within testimony was taken, I, John B. Thompson, special examiner or commissioner, did cause to be personally present, at my office, No. 925 F street northwest, in the city of Washington, District of Columbia, Henry Howes, James J. Barnes, Joseph Tyssowski, Duane E. Fox, William W. Curtis, Lebbeus B. Ward, Samuel S. Burdett, and Frank A. Law, to testify on the part and behalf of the plaintiff in a certain cause now pending in the circuit court of the United States, ninth circuit and district of Nevada, wherein The United States is plaintiff and Joseph T. Williams is defendant.

118 *Pl'ff's Test'y* (*Washington*).

In the Circuit Court of the United States, Ninth Circuit and District of Nevada.

THE UNITED STATES, Plaintiff,
vs.
JOSEPH T. WILLIAMS, Defendant. } In Equity.

Met at the office of John B. Thompson, special examiner, No. 925 "F" street northwest, Washington, D. C., Saturday, January 16, 1886, at 10 o'clock a. m.

Present: E. H. Watson, Esq., assistant attorney, Department of Justice, and S. S. Burdett, Esqr., representing the Attorney General of the United States, for the plaintiff, and E. C. Ford, Esqr., and James K. Redington, Esqr., for the defendant.

The plaintiff here offers in evidence a certified copy, dated January 7th, 1886, by the Commissioner of the General Land Office from the official records and files of his office, and asks that it be marked as an exhibit, whereupon it is by the special examiner marked "Plaintiff's Exhibit A."

The attorneys for the defendant object to the introduction of said certificate on the ground that the papers embraced thereby are incompetent, irrelevant, and immaterial.

Mr. Watson here requests Mr. Burdett to conduct the examination.

119 HENRY HOWES, a witness produced, sworn, and examined on the part of the plaintiff, says as follows:

By Mr. BURDETT:

Q. State your name, age, residence, and occupation.

A. Henry Howes; age, 56 years; residence, 125 Indiana avenue, Washington, District of Columbia, and occupation, nothing at present.

Q. Have you ever held any position under the Government of the United States; if so, what position? State when you were appointed and when your connection with that position ceased.

A. Yes, sir; a clerk in the General Land Office. I was appointed January 1st, 1872, and my connection ceased August 1st, 1885.

Q. What was your particular position during the last years of your service?

A. From November, 1880, I was chief of the pre-emption division.

Q. What branch or division of the General Land Office was, during your term of service, charged with the duty of examining and adjusting selections of land made by the State of Nevada under the act of Congress approved June 16th, 1880, entitled "An act to grant to the State of Nevada lands in lieu of the sixteenth and thirty-sixth sections in said State?"

A. The pre-emption division.

Q. Did you as chief of the pre-emption division of the General Land Office become familiar with the details of the adjustment and examination of the selections of land by the State of Nevada under that act?

A. Yes.

Q. Please state fully and in detail the various steps taken in that division while you were its chief touching the examination and adjustment of a selection of land so made by that State.

(Objected to by the defendant.)

A. When the selections were first received in that division they were given to the book-keeper in the public land division, having charge of the posting and books of the State of Nevada, to be
120 posted in the record or recorded on the tract book. After such lists or selections had been posted they were returned to the pre-emption division. After three months, or as early as possible thereafter as the duties of the office would permit, the lists were compared or examined with the tract books for the purpose of ascertaining whether or not there were any adverse claims of record, and when it was found that no conflicting claims existed to the selection such selections were embraced in a list for approval by the Commissioner of the General Land Office to be forwarded or transmitted to the Secretary of the Interior for his approval. When such list was returned to the General Land Office approved a certified copy of such list was transmitted to the Governor of the State of Nevada, and a copy of such certified list was transmitted to the register and receiver of the United States land office of the district in which the

lands selected were situated. When in the examination of the original list with the records of the office it was found that adverse claims existed to any of the selections by the State they were suspended and the proper State authorities advised thereof, and unless the adverse claims were removed from the record the State selections were canceled.

Q. Look at the paper now handed you, marked or entitled "list No. 24" of selections of land made by the State of Nevada, and state whether you have ever seen that paper before; if so, where, and what it is.

A. (Taking the paper.) I have. I first saw it in the pre-emption division of the General Land Office. It is an abstract of selections numbered 24 of the Eureka series, Nevada. It is the original list.

Plaintiff here offers said list No. 24 in evidence and asks that it be marked as an exhibit, and it is accordingly marked "Plaintiff's Exhibit B."

Q. Had the division under your charge any other designation during your incumbency as chief than the pre-emption
121 division; if so, what?

A. It was designated in the office as "division G."

Q. At the time you were in charge of the pre-emption division had you occasion at any time to examine this list No. 24; if so, for what purpose?

A. I had, for the purpose of noting on the list against the selections for the east half of the southeast quarter of section 33, township 8 north, of range 50 east, and the west half of the southwest quarter of section 34, township 8 north, range 50 east, the words "mill site" in pencil, said selections being embraced in a bracket against the words "mill site."

Q. For what purpose did you make the memorandum or annotation, and with respect to what particular tracts of land?

(Question objected — on the ground that the question assumes that the witness has already testified that he made marks upon the list.)

A. My attention was called to the fact, I think, by the mineral division of the General Land Office that there was a mill-site claim to the tracts embraced in my answer to the previous question. I made it for the purpose of noting the conflict, so as to call the attention of the clerk who prepared the clear list for the approval of the Commissioner of the General Land Office and the Secretary of the Interior.

Q. Who, if any one, in the pre-emption division was specially charged with the duty of examining and passing upon selections of land by the State of Nevada under the act of June 16th, 1880?

A. Mr. J. J. Barnes.

Q. Did you, after you had made the note or memorandum on list No. 24, call the attention of Mr. Barnes to the fact?

(Objected to as leading.)

A. I do not think I did.

Q. What was the effect, so far as the action of the General Land Office, particularly the pre-emption division, was concerned, of your writing the words " mill site " in the margin opposite the said tracts?

(Question objected to.)

A. It would have the effect of suspending the selections of
122 said tracts from approval to the State.

Q. Please examine list No. 24 and state whether or not the note or memorandum so made by you thereon is now found on that list.

A. I can make out the word " mill-site," but it is very faint and would hardly attract the attention of any other person not cognizant of the act of noting the word.

(The defendant objects to all of the foregoing answer after the word " and " in the second line on the ground that it is not responsive to the question.)

Q. You may state whether at the time you made the pencil annotation on list No. 24 it was plainly written.

A. It was.

Q. State what its appearance is now and the cause of its present appearance, if you know it.

(Question objected to on the ground that it calls for mere expert opinion of the witness without any previous showing that the witness is an expert competent to testify in that regard.)

A. It is hardly legible, being very faint, and I know of no cause for its present condition.

Q. When did you first discover the changed appearance of said note or memorandum?

A. I think it was in the month of May last that Mr. Johnston, a clerk in the pre-emption division, was examining a contested case in which either one or both of these tracts selected by the State was in conflict; that upon examining the records of the public land division he found that both of the tracts embraced in sections 33 and 34, 8 north and 50 east, had been approved to the State of Nevada under the act of June 16, 1880. When he informed me of this fact I at once examined list No. 24 and found that the notation against said tracts, to wit, the words " mill site," had been nearly obliterated, so much so that I called upon Mr. Barnes, who made up the list for approval embracing these tracts, and asked him if he noticed the notation.

Q. You may state whether the ordinary and necessary uses
123 to which list No. 24 were put would cause the obliteration or account for the present condition of the list with respect to that notation.

(Objected to.)

A. I should say not.

Q. Did you make the erasure or direct or cause it to be made, or do you know who did make it?

A. I did not, and do not know who did.

Q. Was any clerk in the General Land Office in the proper discharge of his duties authorized to make such erasure?

(Objected to.)

A. He was not.

Q. While this list No. 24 was in the General Land Office, prior to its being taken up and acted on on May 3, 1883, in whose particular charge or custody was it?

A. It was in what are called the "school files" of the pre-emption division, and no one in the pre-emption division would have any occasion to examine the list excepting Mr. Barnes and myself.

Q. During the period that you occupied the position of chief of the pre-emption division were the records and files open to examination of persons having business before that office and division?

A. They were.

Q. Please explain the method by which parties or their agents or attorneys obtained access to the papers, records, and files of the division under your charge.

A. It would be through cards sent in from the attorneys' room. When such cards were received through the messenger the papers called for in the card would be given him to deliver to the agents or attorneys calling for them for inspection in the attorneys' room.

Q. While you were the chief of the said pre-emption division did you know of one Joseph T. Williams, of Nevada, being an applicant or claimant for the title to any tract of public land in that State?

A. It is my impression that he was interested in one or both of the tracts in list No. 24 against which the notation "mill site" was made.

124 Q. Was said Williams represented by an attorney or agent; and, if so, who was such attorney or agent?

(Objected to as incompetent and not the best evidence of the fact.)

A. I don't know as I can state positively who his attorney was, but it is my impression that Mr. E. C. Ford was his attorney.

Q. While said list No. 24 was pending in the General Land Office was it subject to inspection by any person representing the State of Nevada or Joseph T. Williams?

A. It was.

Q. Do you know whether it was inspected by any person in the interest of the State of Nevada or Joseph T. Williams; if so, by whom?

A. I think it was inspected by Mr. Ford or his clerk, Mr. Patterson.

Q. Was any record kept in the pre-emption division of the fact that papers in a given case were sent for from the attorney's room?

A. No, sir.

Q. If said list No. 24 had been sent for from the attorney's room would it have been possible for any one acting in the interest of Wil-

liams to have erased the words "mill site" from that list without that fact immediately coming to your knowledge?

(Objected to.)

A. Yes.

Q. If the erasure of the words "mill site" from said list No. 24 had been made in the attorney's room or elsewhere without authority what would have been the effect of such erasure on the action of the pre-emption division so far as the existence of an adverse claim to the tracts opposite which the words had been originally written was concerned?

(Objected to.)

A. It would cause the selections to be approved to the State.

Q. Where the files of the General Land Office show a claim adverse to a State selection is pending in any division of the office what is the course of procedure in the pre-emption division as to the State selection?

(Objected to.)

A. The proper State authorities are notified of the suspen-
125 sion by reason of the adverse claim and the State is allowed to contest the adverse claim or relinquish.

Q. Does the final allowance or disallowance of a State selection depend upon the prior or cotemporaneous disposal of the claim adverse thereto?

(Objected to.)

A. In cases of pre-emption claims, homesteads, or other claims under the public land laws, made prior to the State selection, the selections would be canceled unless it might be shown that in case of a pre-emption filing it was invalid; but in case the land should prove to be mineral the selection would be canceled, mineral land not being subject to selection by the State or entry under any of the public land laws, it being disposable only under the mineral laws.

Q. Where a selection by the State is pending, and there is also pending a claim for the same tract adverse to the State's right of selection, when will it become proper, under the regular course of procedure, to dispose of the State selection?

(Objected to.)

A. When the adverse claimant attempts to prove up, after due notice, the State would then have the right to contest the claim. If it failed to contest, the adverse claimant would be allowed to perfect his claim and the State selection would be canceled.

Q. Where a State selection is pending, and there is also upon the files of the General Land Office a pending claim adverse thereto, would or would not the office proceed to the disposal of the State selection without reference to the fact of the pendency of such adverse claim?

(Objected to.)

A. The proper State officers, through the register and receiver, would be advised if it was a prior claim and be allowed sixty days to show cause why the State selection should not be canceled. In case no appeal should be taken from such decision within the time required by the rules of practice, the selection would be canceled. In case the conflicting claim is found to be subsequent to the State selection, it would be canceled and the selection approved.

126 The examination is here adjourned—at 2.30 o'clock p. m.—until Monday, January 18th, 1886, at 10 o'clock a. m.

Met on Monday, January 18th, 1886, at 10 o'clock a. m., pursuant to adjournment.

Present: S. S. Burdett, Esqr., on the part of the plaintiff, and E. C. Ford, Esqr., and James K. Redington, Esqr., on the part of the defendant.

Whereupon the examination of the witness, HENRY HOWES, is proceeded with as follows:

By Mr. BURDETT:

Q. You say that where a conflicting claim is found to be subsequent to the State selection it would be canceled and the selection approved. Please state whether the adverse claim would be canceled and the State selection approved in the General Land Office if it appeared that the adverse claim, though received at the General Land Office subsequently to the State selection, had its inception prior to the selection of the land by the State. What is the usual practice in such cases?

A. In such a case that would be considered a prior claim, and the State would be notified of the existence of the prior adverse claim and of the conflict.

Q. Would not there usually be a hearing?

A. Yes, sir; a hearing would usually be ordered to ascertain the facts.

Q. You have in the testimony heretofore given by you referred to the public land laws and mineral laws. Under which of these laws does a mill-site claim arise?

A. Under the mineral laws.

Q. What branch or division of the General Land Office is charged with the duty of examining and passing upon applications for patents for mill-site claims?

A. The mineral division, or, as it is otherwise designated, division "N."

Q. Where a mill-site claim is pending in the mineral division and a State selection under the act of June 16, 1880, embracing the same tracts of land is pending in the pre-emption division would it be in order for the pre-emption division to take up the State se-

127 lection and certify the land to the State before the mill-site claim had been acted upon by the mineral division?

A. No; if the fact was known the case would be adjudicated in the mineral division.

Q. Please look at Plaintiff's Exhibit "A" that is now handed to you, Mr. Howes, and state whether you are the Henry Howes who, with J. J. Barnes, executed, under date of May 3, 1883, the certificate found in the first paper in that exhibit in the following words: "The tracts embraced in the following list have been carefully examined, and are found to be free from conflicts and to inure to the State for the purposes indicated."

A. I am.

Q. In view of the fact that there was at that time pending in the General Land Office a claim for a mill site on a part of the tracts embraced by list No. 24, to which you have heretofore referred, please state under what circumstances you happened to unite in said certificate.

Question objected to by Mr. Redington.

A. Mr. Barnes had charge of making up clear or approved lists, and I trusted to him entirely in making these lists, and when he presented me one I merely signed it, and the list was sent to the Commissioner for approval. It was my practice to sign the certificates without examining personally the records to see as to their correctness.

Q. Can you state to what mill-site claim you referred when you wrote the words "mill sites" on list No. 24?

A. I do not know as I can give the full title to the mill site, but I know it was a Philadelphia mill site.

Q. New Philadelphia?

A. Yes, sir; I think that is the name.

Q. Do you recollect the names of the interested parties?

A. There was only one gentleman—one party—that I know of of being interested, and I saw him. His name was Ward.

128 Q. Was it Matthiessen and Ward?

A. Yes, sir; it was.

Q. At the time you united with Mr. Barnes in the execution of the certificate found on Plaintiff's Exhibit A had you been informed or advised by the mineral division that the application for a patent on the New Philadelphia mill-site claim had been disposed of by that division?

A. I had not.

Q. If at the time list 24 was taken up for action in the pre-emption division the words mill site had still been on that list would the certificate that the lands were free from conflict and inured to the State of Nevada have been made?

Mr. Redington: I object to that question. He cannot testify as to what might have been done in a particular case in the General Land Office. It is utterly incompetent.

A. It would not.

Q. At the time this list No. 24 was originally received at the Gen-

eral Land Office did it bear the signature of any one as the selecting agent of the State of Nevada?

A. I cannot answer as to that fact at that time. I did not then examine it.

Q. Please examine letter dated August 28, 1883, addressed to the register and receiver at Eureka, Nevada, and signed N. C. McFarland, Commissioner, which is a part of Plaintiff's Exhibit "A," and state who wrote the original letter of which this exhibit is a copy.

A. I think that Mr. Barnes wrote the original letter.

Q. Can you state the circumstances under which that letter to the register and receiver at Eureka, Nevada, happened to be written?

A. The attention of Mr. Barnes or myself was called to the fact in the summer that the list of selections was not signed by the State selecting agent, and thereupon it was returned for his signature at this date (pointing to the date of the letter).

Q. At the time of the writing of the letter of August 28, 1883, returning list No. 24 for the signature of the selecting agent of
129 the State, were you conscious of the fact that action had already been had on that list by the pre-emption division and the lands certified to the State of Nevada?

A. I was not.

Q. I now hand you letter dated April 4, 1883 (I guess you will find it), written by Curtis & Burdett. I ask you to state whether you have seen it before, and, if so, where?

A. (Examining letter.) I saw this in the pre-emption division of the General Land Office.

Q. Now state what the paper is. Just describe it briefly and say what it is.

Mr. REDINGTON: I object to this question upon the ground that the paper itself is the best evidence of its contents and its character, and it is incompetent for the witness to testify to what it is.

Mr. BURDETT: Now, then, Mr. Howes.

A. This is a letter from Curtis & Burdett, dated April 4, 1883, addressed to Hon. N. C. McFarland, Commissioner of the General Land Office, submitting a protest and argument in support thereof against the approval of the selection of the State of Nevada, under the act of Congress approved June 16, 1880, of the E. ½ of S. E. ¼ of section 33, township 8 N., range 50 E., Mount Diablo meridian, Nevada.

Q. State if the letter is accompanied by any other document, and if so, briefly what the document is, and whether any acknowledgment in writing is upon the accompanying paper.

Same objection made as before.

A. The letter covered a protest from Franz O. Matthiessen and Lebbeus B. Ward, by Curtis & Burdett, their attorneys, protesting against the approval of the said State selection. It appears to have been served. On the back of it a receipt of the protest is acknowledged under date of April 4, 1883, by E. C. Ford, attorney for claimant under the State.

130 Mr. BURDETT: Mr. Commissioner, I offer those papers now—the letter and accompanying paper—in evidence and ask to have them marked as "Plaintiff's Exhibit C."

Mr. REDINGTON: The introduction of the paper is objected to on the ground that the paper itself is incompetent and immaterial, and upon the further ground that upon its face it purports to be an official record of the United States and, from statement of counsel, to have been out of the possession of the United States and in private custody prior to the time when it is here offered in evidence.

(The paper was here marked by the examiner "Plaintiff's Exhibit C.")

Q. When was this paper received at or in the pre-emption division of the General Land Office?

Objected to.

A. It appears to have been received April 6, 1883, in the pre-emption division.

Q. Upon its receipt what, if anything, was done with it?

Mr. REDINGTON: That is objected to.

A. On the same day it was referred to division "N."

Q. Was any note or memorandum made by you or under your direction on or in that list 24 upon the receipt of this protest against the State selection?

A. Not that I am aware of.

Mr. BURDETT: I think that is all I have to ask Mr. Howes now.

The WITNESS: I wish to make a correction as to the date my attention was first called to the listing of the tracts before referred to to the State of Nevada; that instead of its having been called to my attention in May, 1885, I am satisfied now that it was in December, 1883.

131 Cross-examination by Mr. REDINGTON:

Q. If I understand you correctly, Mr. Howes, during your incumbency of the chief of the pre-emption division you made no personal examination of these lists that were certified to the State of Nevada. That was done in the first instance by Mr. Barnes, whose examination you adopted as correct and upon it performed any function that you, by the practice, was called upon to perform in respect of the lists?

A. Yes, sir.

Q. In respect of this particular list No. 24, did you examine it or look at it at all at the time you united in the certification to the State?

A. No, sir.

Q. Then you had simply presented to you the list No. 2 of lands inuring to the State of Nevada?

A. (Examining list.) Yes, sir; clear list No. 2.

Q. Which list had been made up, in some manner to you personally unknown, by Mr. Barnes?

A. He prepared the list.

Q. In a way to you personally unknown?

A. Yes.

Q. As to what appeared upon that list No. 24 when Mr. Barnes prepared that clear list No. 2 to the State, you do not know from your own information and knowledge, independent of what you have learned from an examination of these papers here?

A. No, sir.

Q. Whether it contained or not any annotation made by you, you do not know? I mean leaving out of view anything you have learned from examining these papers here, divesting yourself of all that you have learned here.

A. No, sir.

Q. At the time you united in that certificate did you examine the tract books in the land office?

A. No, sir.

Q. Or the plat book?

A. No, sir.

Q. Or any other record of the office?

A. No, sir.

Q. In the ordinary practice of the office would any examination for certification be made of any other records than the orig-
132 inal State selection, the tract book, and the plat book?

A. No, sir.

Q. In making up the list to the State was the original State selection list always examined?

A. Yes, sir; it was examined in connection with the tract book.

Q. What do you mean by that?

A. Before the clear list is made up the original list would be examined with the tract book to see whether or not there might appear any conflicts of record which had not been noted on the list by the book-keeper. It is usually the practice of the book-keeper when he is posting lists of this kind to enter any conflicts which may appear on the record against the selection.

Q. Appear on the tract books you mean?

A. Any adverse claims that might appear on the tract books; yes, sir.

Q. Would the book-keeper note on the original State selection list any conflict which might appear on the tract books at the time he posted the list?

A. He should have done so under the rules.

Q. And thereupon the list was returned to your division?

A. Yes, sir.

Q. And nothing would appear on the list when it got back to your division except what appeared on the tract books?

A. Yes; unless some annotation might have been made while it was in the division before being sent up.

Q. The list as returned to you from the book-keeper would be the same list that you sent up to the book-keeper, with the addition of any conflict which might appear on the tract book?

A. Yes, sir.

Q. And now when the list comes to be examined in your division you say another examination of the tract book would be made?

A. Yes, sir.

Q. To see whether any further conflicts had been noted on the tract books since the first examination?

A. Yes, sir.

133 Q. What examination would be made by your division of plat?

A. There would be no examination of the plat unless there might be some doubt as to the area which might be in a legal subdivision.

Q. The plat book, then, was not a book which was resorted to for the purpose of discovering conflicts?

A. No, sir.

Q. Then I am right in understanding that, so far as conflicts were concerned, you looked only to the tract books and such notes as might have been made upon the list itself?

A. Yes, sir.

Q. Those records showing the land to be clear, they were listed to the State?

A. I will say this: that in Nevada and other mineral States we would usually, as the mineral division did not have abstracts of filings and entries noted and posted on the tract books, consult that division as to whether or not there were any mineral claims—that is to say, if the land was in the vicinity of any mineral withdrawals.

Q. Was that done in this case?

A. I do not know. I cannot tell you as to that.

Q. If, at the time your division sent the list to the book-keeper to be posted on the tract book, there appeared any annotation upon the list showing an adverse claim, would the book-keeper have noted that upon the tract book?

A. I think not.

Q. It is the duty of the book-keeper, is it not, to note upon the tract book whenever he posts any paper required to be posted any conflict that appears upon the face of the paper?

A. No, sir.

Q. Are you not mistaken in that? Suppose an entry paper had been sent to the book-keeper showing upon its face a conflict, would it not be the duty of the book-keeper to note that conflict on the, tract book?

A. I think not. He can only note conflicts.

Q. That is exactly what I am supposing; that the paper sent to him for posting showed on its face a conflict. Would it not be his duty to show that on the tract book?

134 A. No, sir; he can only make records from official papers. Any memorandum that might be made in the pre-emption division upon that paper he would not be authorized to note upon the tract book.

Q. List No. 24 has an annotation upon it which you have testified was made by you, to wit, the words "mill site" opposite the tracts in controversy. Please look at the list through this magnifying

glass which I give you and say whether you are still of opinion that that memorandum was made by you.

A. (After examining list.) Yes, sir.

Q. Opposite the same tracts are two certain other notes. Are those in your handwriting?

A. No, sir.

Q. Can you tell me whose handwriting they are in?

A. I think they are in the handwriting of Mr. Hirth, who posted the books—Mr. John Hirth.

Q. Who was Hirth and what was he?

A. He was book-keeper, assistant to Mr. Kohr, who had charge of the Nevada desk, posting the Nevada returns.

Q. And you think this additional writing was in the handwriting of the book-keeper?

A. Yes, sir.

Q. One reads: "See letter to Leon Abbett, 'C,' Mar. 9, 1882." Can you tell me how the book-keeper came to make an annotation of that kind opposite those tracts?

A. He probably found it upon the tract book.

Q. The same annotation?

A. The same annotation.

Q. Then there must have appeared something on the tract book other than the record of an entry?

A. Yes, sir.

Q. Well, with that fact before your mind are you still of opinion that if this list had gone up to the book-keeper with "mill site" written opposite these tracts that the book-keeper would have paid no attention to it?

A. He would not have noted it. That annotation was made, probably, originally—if you want to know—if you want me to
135 state how I think it came there—by Mr. Kohr, who had a practice when he wrote about any particular tract of land or a record to make the memorandum on the tract book.

Q. Now, do you think that the man who posted this list on the tract book would have copied an unauthorized memorandum which he found on the list, and yet have failed to note on the tract book an annotation which the list showed in the way of a conflict?

A. Yes, sir.

Q. He would have done one and not the other?

A. I think he would have done one and not the other. The one was done in the course of business. It was his duty to note what he found on the tract books, whether conflicts or other information.

Q. But not his duty to put on the tract book what he found on the list?

A. No, sir.

Q. Has that always been the practice in the General Land Office?

A. So far as I know; yes.

Q. That was a mere memorandum put on the tract books?

A. Certainly.

Q. But it was a mere unauthorized memorandum?

A. No; because it had been acted upon by division "C."

Q. There are two brackets upon list No. 24, Mr. Howes, one on the right and the other on the left, each enclosing the tracts in controversy, and both now very distinct, are they not?

A. Yes, sir.

Q. Can you tell me who put those brackets there?

A. I think I did at the time I put the words mill site, to call the attention of the person having in charge this list to the fact of the mill-site claim.

Q. Now, supposing you had examined this list at the time and had found it in exactly the condition it is now in, with these two brackets, the annotations, and the indistinct words mill site, would you have listed the lands to the State with that paper lying before you?

A. I think I should not.

136 Q. In other words, there is enough on this paper to have attracted your attention to the conflict?

A. It would have attracted my attention for the reason that my attention had been called to the matter before.

Q. I am asking you now simply with reference to the paper. Suppose nothing had ever been said to you and you were examining the list independently of any extraneous information you had acquired, is there not enough on the face of this paper to have attracted your attention to the fact that there was a conflict as to these tracts?

A. There is.

Q. It was sufficient to cause inquiry, and an inquiry made of the mineral division would have developed the fact of the contest, would it not?

A. Yes, sir.

Q. What are these various check-marks down on the left hand side of the list in pencil?

A. I presume that was done by the book-keeper. I do not know why it was put there.

Q. Do you know whether there were annotations made there by Mr. Barnes at the time he prepared list 2?

A. No, sir.

Q. Mr. Howes, who first called your attention to this mill-site application?

A. Well, it is my impression that it was Mr. Tyssowski, but I think Mr. Curtis was there and this man Ward. That is my impression.

Q. Have you any distinct recollection about it?

A. No; not of the particulars.

Q. Do you recollect anything that was said at the time?

A. No further than that there was an adverse claim—an adverse mill-site claim.

Q. Do you recollect that independently of anything that you see now upon this paper? I want you to relieve your mind of anything you have seen here and say, entirely independent of the papers, whether you have any distinct recollection about it at all.

137 A. Oh, yes; as to this claim and its being adverse to the State selection, but I cannot without examining the papers describe the tracts affected by the claim.

Q. And you think Mr. Tyssowski was the gentleman from the mineral division who called your attention to the matter?

A. Yes, sir.

Q. Can you tell me when that was?

A. I think it was some few months after the list was received.

Q. I wish, Mr. Howes, that you would fix that matter as definitely as you can without conveying in your answer any impression that you got from the examination of these papers. Just divest yourself of all matters pertaining to these papers, and tell me whether you have any recollection whatever as to the time when the communication was made to you.

A. I know at the time that this matter was presented to me that the selection was in the hallway, where we kept our selections—in the case in the hallway—and when my attention was called to this claim that I went into the hall and took the selection out of the case and there noted upon it this annotation.

Q. Well, does that circumstance in any way enable you to fix the date of the occurrence?

A. No; but it was long prior to the listing.

Q. How do you know that?

A. Because the list had not been made up, and they were being pressed, I know, by the agent for the State to have these lists prepared.

Q. Well, why do you know that at the time you made the examination in the hall and the annotation that the list had not been prepared for approval?

A. Because there would have been no object in noting it there then. The title would have already passed if it had been listed.

Q. After you get through what did you do with this list 24? Did you place it in the files in the same place as before?

A. Yes, sir.

138 Q. Now, you have already testified, Mr. Howes, that at the time the letter of August 28, 1883, was written, sending this list back to the register and receiver to have the signature of the selecting agent attached, which was subsequently to the approval of the list, that you had no knowledge of the fact that the list had been certified to the State. Now, it appears that on at least one occasion you examined this matter after the certification and wrote official communications about it, inadvertently overlooking the fact that the land had been certified to the State. Now, supposing the communication with reference to the mill site had been made to you after the listing, to make the annotation, you would have gone to the same place to find the list that you have already testified to, to wit, to the hall, would you not?

A. Certainly; I should have gone wherever the list might have been.

Q. If that is so, and you had taken out the list, might you not have made that annotation on it, notwithstanding the fact that the list had been made to the State?

A. I would not.

Q. Why, what was there concerning the circumstances of the case

that would have particularly directed you to the listing in the one instance and not in the other?

A. The fact of the listing itself would show.

Q. The list itself would show that it had been certified at the time the letter of August 28, 1883, was written?

A. That was a matter I know nothing about. The letter was merely passed to me *pro forma* to pass.

Q. Then with this letter of August 28th you had nothing to do, only to put your initials on it?

A. That is all.

Q. Then you do not intend, in your answer to that question, to say that at the time of the letter of August 28th, 1883, you made any examination to see about the listing?

A. No, sir.

139 Q. Now, I go back again to the original question as to the date when this communication was made to you, and ask again how you know it was made prior to the listing.

A. Well, I think it was made soon after the list was received and before it was in order to be taken up.

Q. Well, I do not ask you what you think about it. I ask you now for your bare recollection.

A. That is my recollection, and in addition to that is the fact that the list was withdrawn for examination.

Q. What do you mean by that?

A. This contest between Mr. Ward and this Williams was on at that time, and they were examining the list and the papers. Mr. Ford had in the meantime sent in his card for this list.

Q. Well, I still do not understand you. Please state, Mr. Howes, what, if any, reason you have derived from your present recollection, outside of these papers, for saying that this communication was made to you before the listing. Now, have you any recollection about it at all?

A. I have the recollection that soon after my attention was called——

Q. Why do you say "soon after?" Now, I want you to answer.

A. Well, I see that on the day the list was received——

Q. I want you to leave out of consideration these papers I have shown you, and then tell me from your recollection what occurred at the time.

A. I can tell you this: that if this State selection had been listed at that time and it had come to my attention and I had known about it, the matter would at once have been called to the attention of the office.

Q. But suppose the certification had been made and you did not know of it, would not you still have put the annotation on the list? My question supposes that you did not know of the listing, and that it was not called to your attention by anybody, but that in

140 that condition of affairs somebody from the mineral division called your attention to it. Would not you then have made the annotation?

A. Hardly. The annotation should have been made, as that was

done, for the purpose of checking the examiner—as a check on the examiner.

Q. You do not understand me. I am supposing that your are sitting in your place in the pre-emption division without any knowledge of the matter whatever, without knowing that the list had been taken up or certificate issued, and, sitting there in that position, some one came in from the mineral division and told you of the conflict, without any knowledge on your part, as I said before, of the fact of the listing or otherwise of the land to the State. You then go into the hall, take this list out of its proper place in the files. Now, going there in that frame of mind and that knowledge, would not you have made the memorandum on the list?

A. I might have; perhaps so.

Q. Are not you certain that you would?

A. It might have been done, but the probability is that it would not have been done, for the reason that if there had been any note made on there it would be made entirely as a check to the examiner. If the list had been certified there would have been no necessity for making the annotation.

Q. Well, but I am assuming that you do not know that the list had been certified. I am asking you now and assuming that at the time the communication was made that the list had been examined and certified, but you did not know it. Would not you then have made the annotation?

A. It is barely possible.

Q. Would not you have certainly done it?

A. I do not know.

Q. But why not? The patent had gone to the State, but you did not know that. I am assuming that you did not know that. You then get this information from the mineral division and go out in the hall. Now, under those circumstances, don't you think you would have——

141 Mr. REDINGTON: Why, of course you would. Can you tell me what case it was that Mr. Johnson was examining in the pre-emption division and when it was examined?

A. I cannot.

Q. Was there any controversy referring to these lands?

A. Yes; he had up some contest case in which one of these tracts was involved.

Q. And that was the first your attention was brought to it?

A. Yes.

Q. He was examining some claim to that same land, discovered that the land had been listed to the State, and thereupon called your attention to it?

A. Yes.

Q. And that was the first you knew of it?

A. Yes; the first I knew of it.

Q. Then, whenever it was that you made this annotation, you did not know that the land had been listed to the State?

A. I did not know it had been listed at any time prior to this time; but, as I before said, my impression ——

Q. (Interrupting.) But I don't want your impression. Now, Mr. Howes, this list of land No. 24, after it got back to your division from the book-keeper, was placed in this book-case in the hall?

A. I presume so.

Q. That is where you found it when you made the annotation?

A. Yes.

Q. That was the place for it?

A. Yes.

Q. I think you testified the other day that during the pendency of that list in your division and before its certification no person in the office would have had occasion to consult it except yourself or Mr. Barnes—there in your division or elsewhere.

A. I think the answer to that question was as to whether any person in my division would need to consult it. Mr. Barnes and I would be the only ones.

142 Q. You refer to our division alone?

A. Yes, sir.

Q. Suppose an examiner in your division should come across an *ex parte* pre-emption proof, and upon going to the tract book should discover it was in conflict with a State selection, would he not have occasion to examine it?

A. No; he would pass it over to Mr. Barnes or myself.

Q. Are those book-cases in the hall locked?

A. No, sir.

Q. Anybody who knows where the papers are can go there and open them?

A. Yes.

Q. You described the other day, Mr. Howes, the method by which papers were sent from your division to the attorneys' room upon call. Atthe time of your incumbency was there any limitation upon the right of anybody to send for papers to be examined?

A. I think it was limited to attorneys.

Q. In your entire experience did you ever deny access to papers or records in your division where attorneys sent in for them, whether they were attorneys of record or not?

A. If they sent in a card we made no examination to see whether they were attorneys of record.

Q. Then anybody could have sent in a card from the attorneys' room and asked for this list and would have had it?

A. Yes.

Q. Have you any recollection whether any such thing as that was done in this case otherwise than as you have already testified?

A. No, sir.

Q. Do you know it was not done?

A. No, sir.

Q. Now, during the time that this list was pending you say that you were of the impression that a man named Williams was interested in the selection in some way, and that he was represented by Col. Ford?

A. Yes, sir.

Q. Have you any recollection of anybody being interested against Williams?

A. Yes, sir.

143 Q. Who were they?

A. A man named Ward.

Q. Who was his attorney?

A. Curtis and Burdett.

Q. Did they have access to the papers?

A. I do not know whether they ever saw the papers.

Q. Have you any recollection of the attorney for Williams sending in any card?

A. Yes.

Q. How is it you recollect that?

A. Because the party (Mr. Ford's clerk) had a conversation with me about the matter.

Q. That is how you recollect it being sent to Williams' attorney?

A. Yes; sent to Mr. Ford.

Q. But the papers were equally open to the inspection and in the attorneys' room to the custody of the attorneys of Matthiessen and Ward as to the attorney for Williams or anybody else?

A. Yes.

Q. If said list No. 24 had been sent for from the attorneys' room would it have been possible for any one acting in the interest of Matthiessen and Ward to have erased words without that fact coming to your immediate knowledge?

A. Possibly.

Q. In answer to the same question the other day in connection with the name of Williams you said yes. I presume you mean the same thing now?

A. Yes.

Q. Suppose that the annotation by you had been made on list No. 24 after the approval of the lands to the State and the papers had then been sent to the attorneys' room, what would have been the effect of any erasure of the word "mill site" from the list?

A. It would have had no effect unless we had discovered it; but you know we would not have been likely to have discovered it. We never examined the papers after their return to the division.

Q. Would not the effect have been to have laid the basis for exactly the suit that is now brought in behalf of the United States against Williams?

144 A. Perhaps; but if they had been erased and it had come to our knowledge we should have endeavored to ascertain who made the erasure; but, as I said the other day, papers are called for from the attorney's room and are returned. We seldom—and I do not know as I ever—examined to see whether they had been tampered with while in the attorney's room. We treated every one as a gentleman, you know.

Q. Of course. Now, whenever you speak in your examination, Mr. Howes, of the presence of an adverse claim resulting in a suspension of the State list when in conflict, you mean in every instance a prior adverse claim?

A. Certainly.

Q. There is no conflict between a State selection and a subsequent claim?

A. No more than I have before said.

Q. Suppose you had a list in your division and any other division had called your attention to an alleged adverse claim subsequent in date to the State selection, I understand you to say that you would have approved the list of lands to the State and canceled the so-called adverse claim?

Ordinarily, yes.

Q. Suppose upon an examination of the alleged adverse claim you found that the earliest date in which the claim, taken altogether, alleged an inceptive right against the United States was subsequent to the State selection, you would then follow the same course of approval and cancellation?

A. Yes, sir.

Q. Mr. Howes, was this list 24 ever out of the possession of the General Land Office while you were chief of that division?

A. I think the papers were sent to the Secretary while I was employed in the office, with the recommendation that steps be initiated to vacate the listings.

Q. Prior to December, 1883, when your attention was first called to the fact of the alleged erasure, were they ever out of the possession of the General Land Office?

A. Not to my knowledge.

Q. Were they ever sent to the register and receiver?

A. Yes, at that time for the signature of the selecting agent.

145 Q. Now, I want to ask you a question or two about that transaction. How was it discovered at that late day that the signature of the State agent was not attached to the list?

A. I do not remember.

Q. Don't remember who discovered it?

A. No, sir.

Q. Or how the attention of Mr. Barnes was directed to the fact?

A. No; I do not know how it was discovered.

Q. After the certification to the State somebody discovered that the State agent had not signed that list, and, notwithstanding the fact that the land had been certified to the State, the Commissioner of the General Land Office sent the list back for signature?

A. Yes, sir.

Q. Why was that done?

A. To supply a clerical omission—to perfect the paper.

Q. What was the necessity of perfecting that list when the lands had already been certified?

A. We wanted to perfect the paper. It was a mere clerical omission.

Q. In other words, having adjudicated the matter and passed the title out of the United States into the State of Nevada, you considered it essential to go back and correct the record as to a clerical error?

A. Yes, sir; the clerk who had it in charge did.

Q. And the papers in pursuance of that idea were sent out and remained for some months with the register and receiver?

A. I don't know how long it remained there. I can't say as to that.

Q. Look at Exhibit A and see if you can tell me how long they remained out.

A. (Examining paper.) It would appear here from this letter that the list was transmitted the 28th of August and returned from the Eureka land office under date of September 26th, 1883.

Q. Then it was about a month?

A. Yes.

Q. Have you any idea as to whose inspection that paper was subject at the local land office at that time?

A. I don't know.

146 Q. So far as you know, the whole world might have had access to it?

A. Yes, sir.

Q. Now, can you tell me, Mr. Howes, how anybody could have examined a matter of that kind and sent that list out for correction because of a clerical error without discovering that the land had been certified to the State, and that this conflict existed?

A. Well, Mr. Barnes, who, as I said, made out the list, was aware of the fact that the land had been approved, but, so far as I was concerned, I knew nothing about it.

Q. Had Mr. Barnes at that time any knowledge of the fact that an annotation had been made on the list?

A. No, sir.

Q. Mr. Howes, are you conversant with the controversy that went on in your division in respect of this matter between these parties, generally speaking?

A. I simply knew that there was a claim of a mill site. The facts in the case I did not know.

Q. In Exhibit A are a number of letters. There is a letter from the Commissioner to Messrs. Curtis & Burdett, and there has been introduced to-day a letter from Messrs. Curtis & Burdett to the Commissioner enclosing a protest against the listing of these lands to the State. Do you know whether or not Mr. Ford, the attorney for Williams, filed an argument in that case requesting the certification of the land to the State after the certification had actually been made?

A. No, sir; I do not know.

Q. And you do not know whether that argument was ever replied to by the other side?

A. I do not remember anything in relation to it now.

Q. This list No. 2 to the State of Nevada is certified to by yourself and Barnes and by the Commissioner of the General Land Office as of dates May 3 and 4, 1883, to be free from conflict and to inure to the State under the act of June 16, 1880. Now, suppose that fact was officially certified here to be true at the time when list 24 was sent back to the register and receiver, in whose interest, then, would it have been to have changed any annotation on that list?

147 A. That is a matter I cannot tell you.

Q. It appears, Mr. Howes, from the plaintiff's bill and complaint in this case that the mill-site application was made to the local land office on the 8th day of January, 1883; that the application to enter was rejected because of the previous selection by the State, and that from that decision an appeal was taken to the General Land Office, which was there pending at the date of the certification of the land to the State. Now, suppose the examiner in your division had gone into the mineral division and seen that record just as I have stated it, would he not have still approved that list to the State?

A. I would not think so.

Q. Why not?

A. Because the rule there was that when a contest was pending no action should be taken until that contest had been finally decided.

Q. You do not understand me. The mill-site application was made on the 8th of January, 1883. The selection by the State was made September 2, 1882. Now, suppose, you were examining that State selection made in 1882 and had found the note of a conflict, which, being followed up, you found to be based upon an application made several months later, would you not then have still listed the land to the State?

A. Not necessarily. It is always——

Q. What was the practice in your division when informed by the mineral division that there was an adverse claim of this kind to a State selection?

A. We would wait and allow them to act on it.

Q. But a mill-site application is not a mineral application?

A. I don't know anything about that.

Q. You know it is an agricultural application?

A. Yes.

Q. You know it cannot take land that is mineral in character?

A. That is my understanding.

Q. Now, being an agricultural application and having been made subsequently to the State selection, would not you, in performing the functions of this division, have gone ahead and listed that land to the State?

148 A. We would, unless our attention had been called to a contest. Now, in this case I remember my attention was called to the fact that there was a conflict, and that there were large interests involved.

Q. You have already stated, Mr. Howes, several times that whatever you have said in respect to a contest was based upon the idea that the adverse claim was a prior adverse claim. Now, suppose you had found here in this case that there was nothing on record against the State selection except an agricultural subsequent claim, would it not have been your duty under the practice to have listed the lands to the State?

A. Ordinarily.

Q. Among the official papers which seem in some way to have

reached the examination room in connection with the original contest between these parties and in relation to the protest of Curtis and Burdett against the listing of these lands to the State, I find the paper which I now hand you. Please look at it and tell me what it is and when it was filed in the General Land Office.

A. (Examining paper handed him). It appears to be a reply to Curtis and Burdett on the part of Mr. Ford, attorney for Williams.

Q. When was it filed in the General Land Office?

A. I can only state when it was filed in the office as appears by the official marks.

Q. Well, when was it filed in the General Land Office from official marks?

A. May 7, 1883.

Q. Look upon the back of the original papers and see if there is any note of service upon anybody.

A. It was served on Curtis and Burdett, May 5, 1883.

Q. Is there any acknowledgment of service thereon?

A. Yes, sir.

Mr. REDINGTON: Now, I would like to have the examiner
149 put a private mark on the paper to identify it.

(Argument of E. C. Ford, dated May 5, 1883, here marked for identification by the examiner.)

Q. I now hand you a bundle of official papers already referred to relating to the controversy and ask you whether you find any paper filed by Messrs. Curtis & Burdett or any other attorney for Matthiessen & Ward subsequently to the filing of the paper last above mentioned subsequently to 7th May, 1883.

A. (After examination.) Yes, sir; I find one letter from Curtis & Burdett.

Q. What is it and what is its date?

A. Dated December 20, 1883.

Q. And what is it?

A. It is relative to the mill site, the New Philadelphia mill-site claim, as to its being embraced in the E. $\frac{1}{2}$ of S. E. $\frac{1}{4}$ of sec. 33, T. 8 N., R. 50 E., and a part of the W. $\frac{1}{2}$ of S. W. $\frac{1}{4}$ of sec. 34. They say, "We are advised by our clients that the extension of survey of the five acres into section 34 was rendered absolutely necessary in order to conform the mill site to the practical requirements of the business of milling ores and the configuration of the ground," and ask that in the event of proceedings being instituted to set aside the certification to the State the part in sec. 34 as well as the part in sec. 33 might be included in the proceedings.

Q. Is that the only paper you find in the case subsequent to May 7, 1883?

A. That is the only paper that I find from Curtis and Burdett.

Mr. REDINGTON: I would like to have that letter of December 20, 1883, identified.

Q. When you say that a mill-site application is made under the

mineral laws you do not mean to say that it involves any disposition of mineral lands?

A. No. I was not speaking of that. I merely say that it is adjudicated in the mineral division.

Mr. REDINGTON: Well, that is all.

150 Redirect examination by Mr. BURDETT:

Q. Do I understand you to say that with respect to mill sites they are adjudicated in the mineral division of the General Land Office?

A. Yes, sir.

Q. Do you testify that matters within the cognizance and jurisdiction of the mineral division are left for the adjudication of that division?

A. Yes, sir.

Q. Will you look at the list No. 24 on the back thereof and notice the figure "2" in red ink at the bottom?

A. (Looking at paper.) Yes, sir.

Q. Please state what that refers to, if you know.

A. That is an annotation of the number of the approved list.

Q. What is the number of the approved list as it was made up in whole or in part from list No. 24?

A. No. 2, Eureka series.

Q. According to the practice and routine of the pre-emption division in proceedings of this kind, when would figure "2" be put upon that list?

A. It should be done when the list is completed—the approved list. It is an annotation that is put on the different selections to indicate which approved list embraces the lands selected.

Q. When you took that list 24 out of the files, as you have heretofore testified to, for the purpose of making the annotation "mill site" on the same, you would have noticed the fact that the tracts in that list had been finally certified to the State—you would have been likely to have noticed the fact, from the appearance of that figure "2" there, that the tracts it contained had been finally certified to the State if such was the fact?

(Question objected to.)

A. I should. Now, I want to explain, so far as that figure 2 is concerned, that that mark would not indicate that the whole of a list has been certified, but that a clear list embracing some or
151 all of the tracts in the list of selections, free from adverse claims, have been certified.

Q. In view of all the facts is there any doubt in your own mind as to the fact that you made the annotation prior to the final certification of these tracts to the State?

(Objected to.)

A. There is no doubt in my mind.

Q. You speak of a clerk of Col. Ford's at one time speaking with you with respect to these tracts and the list. Will you state the name of the gentleman to whom you referred?

A. Mr. Patterson.

Q. Do you know where he is now?

A. I think he is dead.

Q. Was there an adjudication of the mill-site claim either by your division or by the mineral division or by any division of the General Land Office prior to the certification of these tracts to the State?

A. Not that I am aware of.

Recross-examination by Mr. REDINGTON:

Q. Did you see that figure 2 on the list when you went out into the hall to make the annotation?

A. I cannot swear to it. I don't remember it.

Q. Are you able to swear that it was there?

A. No, sir.

Q. Are you able to swear that it was not there?

A. No, sir.

Q. You haven't any doubt that, as you say, in your own mind—that that annotation was made by you before the listing of the land to the State. You are able to resolve every doubt by what you have seen here and your recollection?

A. Yes, sir.

Q. Well, then, every doubt is now resolved by an inspection of all these papers and everything connected with the case, as well as by your recollection?

A. Yes; that the annotation was made prior to its listing, and I will state an additional reason: I made up all the lists, after I went in there, of approved selections until, I think it was, about the first of January, 1883. Mr. Barnes had had formal charge of
152 them. Well, when he had charge of them and I went into that division I wanted to have him take up these lists and work on that difficult matter again. He declined for the reason that he had been reduced when transferred from the school division, but said that if he could get back into his old position he would not be unwilling to do it. He considered the reduction as a reflection upon him. I think it was in January, 1882, he was restored to his old place. He then took up this matter of making out lists and working on school matters entirely. The records in the office will show the fact, but that is my impression. Because he made out this approved list with me——

Q. But how does that refresh your recollection?

A. Well, as to its being made prior to the list being approved——

Q. How does that refresh your recollection?

A. Because I had entire charge of the lists at that time, and if it had been approved I should have known it. He took possession of the desk in January, 1883.

Q. Well, then, you were in charge at the time of the approval of this list?

A. Prior to then I made out all the work myself.

Q. How does that refresh your recollection?

A. Because I should have known it. That note was made by myself, and I should never have put it in an approved list. This

fact confirms me in my impression that it was made prior to the approval, for I had it in charge at that time, and if it had been approved prior to my putting that note on there I should have known it up to that time.

Q. You mean to say that if you had approved that list then you would have been required to put a note on it after it had been approved, and then your attention would have been more directly called to it?

A. Yes, sir.

Q. How does that refresh your recollection that when you afterwards made the annotation——

153 The WITNESS (interrupting): I don't say afterwards. If you are in doubt as to whether the annotation was made prior or subsequently to the approval of the list——

(Mr. REDINGTON, interrupting: I have no doubt.)

The WITNESS: I haven't the least doubt myself that the annotation was made there prior to this listing.

Q. Now, that doubt in your mind is removed by all the circumstances surrounding the case, your inspection of these records, and everything connected with it, as well as by your recollection?

A. I have never had any doubt.

Q. Well, you have no doubt because of your recollection and the inspection of these papers and all the circumstances surrounding the case?

A. Yes, sir.

HENRY HOWES.

Subscribed and sworn to before me—

JOHN B. THOMPSON,
Special Examiner.

An adjournment is here, at 1 o'clock p. m., taken until two o'clock p. m.

Met at 2 o'clock p. m. pursuant to adjournment.

Present: Counsel for the respective parties.

Whereupon JAMES J. BARNES, a witness produced, sworn, and examined on the part of the plaintiff, says as follows:

By Mr. BURDETT:

Q. State your name, age, residence, and occupation.

A. James J. Barnes; occupation, clerk in the General Land Office; residence, 1433 R street northwest, Washington, D. C.; age, 54 years.

Q. How long have you been employed in the General Land Office, and has your service been continuous?

A. I was appointed in 1865. My service has been continuous.

Q. In what branch or division of that office were you employed during the years 1882, 1883, and 1884?

A. In the pre-emption division.

154 Q. What were your particular duties in that division during those years?

A. I was assisting Mr. Howes on State selections.

Q. In what branch or division of the General Land Office during the years 1882, 1883, and 1884 did the duty of examining and passing upon the selections of land made by the State of Nevada under the act of June 16, 1880, belong?

A. The pre-emption division.

Q. Are you familiar with the course of examination or investigation to which a selection of land made by that State under the act of June 16, 1880, was subject in the pre-emption division?

A. I am.

Q. If so, please state fully what course was the proper one to pursue; give us just a brief history of it.

The WITNESS: Shall I commence after the selection is recorded on the books?

Mr. BURDETT: When the list has been received at the General Land Office.

A. When the lists are received they are handed to the book-keepers for posting on the tract books. That is the first thing. After that they are returned to the pre-emption division, and in due course are taken up for examination as to conflicts, the right of the State to select the particular land, and all matters pertaining to that selection. If the selections were found to be free from adverse claims they were embraced in a clear list and submitted to the Commissioner and to the Secretary of the Interior for approval. If the list was approved it was returned to the division and a certified copy was made and transmitted under the seal of the office to the Governor of the State, and a copy also sent to the local office of the district in which the land selected was situated.

Q. Where the records or files in the General Land Office showed an adverse claim to a selected tract, and the fact of the existence of such adverse claim had been noted on the State selection, what
155 was the proper and orderly course of procedure in the office as to the tracts covered by both the State selection and the adverse claim?

A. The selections were suspended, and if the adverse claim was prior to that of the State the local officers were advised of the facts and the register directed to notify the State authorities of the conflicting claim, and to show cause why the State selection should not be held for cancellation. If the adverse claim was a subsequent one to that of the State selection it was canceled and the local officers advised of the fact without appeal—without the right of appeal.

Q. I now hand you paper, called list No. 24, which is Plaintiff's Exhibit B. I ask you to state what it is, whether you have seen it before; and, if so, where?

A. I have seen it before in the General Land Office, as an official in the pre-emption division.

Q. In a general way state what it is, Mr. Barnes—just state briefly.

A. It is a list of selections under what is known as the two-million-acre grant to the State of Nevada—the original list.

Q. Mr. Henry Howes has testified that while this list No. 24 was pending in the General Land Office he wrote the words "mill site"

opposite certain tracts embraced by that list. Did you know or were you informed that the words "mill site" had been so noted on list No. 24?

(Objected to.)

A. I have no recollection of ever having been so notified or of ever having seen such annotation.

Q. Where a note or memorandum is made on a State selection that some adverse claim exists as to land embraced in the list the effect is to suspend action on such particular tract until the adverse claim has been investigated or removed?

A. Yes, sir; that is the effect.

Q. During the time list No. 24 was pending in the General Land Office was that list open to inspection or examination by any
156 one acting as agent or attorney of the State of Nevada or as agent or attorney for any person claiming the lands under and through the State?

A. It was.

Q. State the method by which it could be obtained for examination.

A. Application was made at the attorney's room of the General Land Office by the party seeking the information by card; that card was delivered to the proper division to secure the paper or whatever it was for examination. It was then sent to the attorney's room.

Q. Do you know whether the State of Nevada or any one claiming a particular tract under or through the State was represented by an agent or attorney while list No. 24 was pending in the General Land Office; if so, who was such agent or attorney?

A. No, sir; I do not know.

Q. Do you know whether, whilst that list was pending in the pre-emption division, it was sent for from the attorney's room by any one acting in the interest of the State of Nevada or claiming any tract of the lands mentioned therein?

A. Yes, sir; the list was sent for by some one, but I cannot say who.

Q. Can you say in whose interest it was sent for?

A. In the interest of the State, I suppose. I am not certain as to that.

Q. When papers have been sent for from the attorney's room are they, on return to the pre-emption division, usually examined to ascertain whether they have been tampered with while they have been in the attorney's room?

A. They are not.

Q. While papers are out of the pre-emption division and in the attorney's room is it possible, for a person so inclined, to erase or obliterate a lead-pencil note or memorandum which had been made on them in the pre-emption division without that division becoming aware of that erasure or obliteration?

A. Yes, sir; it was.

Q. Mr. Barnes, please examine that paper, which is the Plaintiff's

157 Exhibit A, and the first paper it contains; state what it is and whether you are the James J. Barnes who, with Henry Howes, made the certificate on the back of the paper.

A. Well, it is what we call a clear list of State selections.

Q. If it has a number give it to identify it.

A. It is list No. 2—clear list—of selections under the two-million acre grant to the State of Nevada, of which I presume the original copy was made by me.

Q. Are you the same James J. Barnes referred to?

A. I am the same James J. Barnes.

Q. Will you please read the certificate?

A. (Witness reads:)

"GENERAL LAND OFFICE, *May 3rd*, 1883.

"The tracts embraced in the following list have been carefully examined and are found to be free from conflicts and to inure to the State for the purposes indicated.

"J. J. BARNES,
"HENRY HOWES.
"*Chief of Pre-Emption Division.*"

Q. Is there any date to that certificate?

A. Yes; May 3, 1883.

Q. In preparing the list and that certificate upon what paper or papers did you act as the basis for the same?

A. The original list.

Q. At the time you prepared and signed that certificate what was the condition of list No. 24, as to the existence or non-existence of the words "mill site" opposite the east half of southeast quarter of section 33 and west half of southwest quarter of section 34, 8 N., 50 E.?

A. I saw no such words on the list when I examined it.

Q. What effect would the erasure or obliteration of the words "mill site" from the list have on your action in examining it and certifying that the tracts embraced by the paper or the list were free from conflict and inured to the State, &c.?

A. It would result in its being listed for approval.

158 Q. Where an adverse claim to a State selection is pending at the same time with the State selection, if the adverse claim arose under the mineral law and the papers and files respecting it were in the mineral division, what division acts upon such adverse claim—the mineral or the pre-emption division?

A. The mineral division.

Q. In such a case would or would not the pre-emption division proceed to the adjustment of the State selection before action had been taken by the mineral division?

A. It would not.

Q. When did you first discover or when were you first advised that the words "mill site" had been upon list No. 24?

(Objected to.)

A. I do not remember, sir. Some time after the approval of the list. The particular date I do not recollect.

Q. When so advised did you examine the list to ascertain its condition with respect to any such annotation?

A. I presume I did, but I do not swear I did; but I have no doubt I examined it. It would be a very natural thing to do.

Q. Do you recollect in what condition you found it?

A. No; I do not. I don't remember anything about that, either as to when it was called to my attention or whether I examined it, but it is very reasonable to suppose that I did. I cannot say how it appeared, only I am satisfied there was no word "mill-site" on it, either then or at the time I examined it.

Q. Have you recently examined that list No. 24?

A. I have.

Q. Can you state whether or not it is in the same condition now as you recollect it was when your attention was called to an alleged erasure?

A. So far as I know it is — the same condition.

Q. If, at the time you prepared the certificate—that joint certificate—with Mr. Howes, of date May 3, 1883, the words "mill site" had been legible to you on list 24, you may state whether or not you would have made that certificate.

A. Most assuredly not.

Q. Will you state whether or no when list No. 24 was received in the General Land Office it bore the signature of any selecting
159 agent of the State of Nevada?

A. I have no knowledge to the contrary. I suppose it did. I cannot remember four or five years back whether it did or not, but I presume so, because if it had not borne the signature of the State agent and of the local officers it would not have been certified.

Q. Please look at the letter certified by the Commissioner of the General Land Office that I now hand you, which is a part of Exhibit A, and state what its purport is.

(Objected to.)

A. It is to return the list No. 24 for the signature of the selecting agent.

Q. Give the date of that letter.

A. August 28, 1883.

Q. To whom addressed.

A. To the register and receiver, Eureka, Nevada.

Q. Look again at Plaintiff's Exhibit A and to the next paper and state what its purport is.

A. Its date is September 26, 1883, and addressed to the honorable Commissioner of the General Land Office, returning list No. 24 of selections made by the State of Nevada under the act of June 16, 1880, with the signature of the selecting agent affixed as required by letter G of August 28, 1883.

Q. In view of those letters, what do you now say as to the question whether or not, when you acted on the list, it bore the signature of a selecting agent of the State of Nevada?

A. It seems to be very apparent that it did not.

Q. Please look at Plaintiff's Exhibit C, which is first referred to in the testimony of Mr. Howes, and state whether or not you had certified the tracts in list No. 24 to the State at the time when that paper was received in the General Land Office.

A. No; I had not.

Q. Please examine that paper and state whether it passed through the pre-emption division of the General Land Office and at what date.

A. Yes, sir; it passed through the pre-emption division,
160 and was referred to division "N" by Mr. Howes.

Q. Please look at list No. 24 again, on its back, and state whether there is anything thereon to indicate into what final lists or approved lists the tracts contained were carried?

A. There is not.

Q. Do you notice the figure two in red ink on that list?

A. Yes, sir.

Q. Will you state what that indicates?

A. I have no idea.

Q. By whom was that figure two made?

A. I have no idea of that.

Q. Is it or not the usual course of procedure in the pre-emption division to indicate by a figure or in some way into what final lists the tracts in the lists of selections are carried?

(Objected to as leading.)

A. It is customary to note on the list, the original list, approved such a date and such a list, but it was not always done. It depended largely upon whether the party having it in charge had time, I expect. I do not know that any such note as that had been made on any of these Nevada lists. It is a question with me whether it was.

Q. What was the number of the approved list into which the tracts from list of selections No. 24 was carried?

A. Into list number two.

Q. In view of the fact that this list No. 24 did not on May 3, 1883, bear the signature of the selecting agent of the State of Nevada, please state whether or not there was at that time or date pending in the pre-emption division of the General Land Office any other list or selection of the east half of the northeast quarter of section 33 and the west half of southwest quarter of section 34, township 8 N., range 50 E., Nevada, or either of those tracts which conformed to the rules or regulations of that office and upon which you, in the discharge of your official duty, was authorized to act.

A. There was not, so far as I know.

161 Cross-examination by Mr. REDINGTON:

Q. Mr. Barnes, as to that figure 2 on the back of that list, can you state who made it?

A. No, sir.

Q. Or when it was made?

A. I have no idea.

Q. Nor what it means?

A. Nor what it means.

Q. You stated, Mr. Barnes, that the effect of an annotation of an adverse claim upon one of these lists in the pre-emption division has the effect to suspend that selection until the adverse claim is disposed of. You mean by that a prior adverse claim?

A. Yes, sir.

Q. If the claim was subsequent that would not be the effect?

A. No, sir.

Q. This list No. 24, during the time that it was pending in the division before certification, and afterwards and up to a very recent period, was subject to the inspection and examination of anybody who sent for it?

A. Yes, sir.

Q. There was no restriction on the right of anybody to send in for it—it was open to the public generally?

A. Yes, sir.

Q. If anybody sent in a card for it it was sent up?

A. Yes, sir.

Q. Where was that list kept, Mr. Barnes?

A. Well, up to within six months back it was kept in the files of the pre-emption division.

Q. In what part of the building were these files kept?

A. They were in the hall on the second floor, on the G-street side.

Q. In file-cases?

A. Yes, sir.

Q. Were they locked or unlocked?

A. Unlocked.

Q. You have no recollection as to any particular person having taken out that list?

A. No, sir; I have not.

Q. When you came to make up this list No. 2 to the State had you, independently of the papers which you have been looking at here, any distinct recollection of having examined list 24?

A. No, sir.

Q. There is nothing that brings the fact of the examination to you at all aside from these papers?

A. No, sir; and its being the usual custom.

162 Q. Look at that list again there and opposite the tracts in controversy and see how it looks to you now. Do you find any annotation there now?

A. (Witness examining paper.) There seems to be an annotation of some sort in the margin here. I can see the words "See letter to Levi Hill, March 9, 1882." I can just distinguish that there was at some time another note there apparently running the other way.

Q. Can you read it?

A. No, sir.

Q. Do you observe a bracket there (pointing)?

A. I do.

Q. Do you observe a bracket on the left-hand side, opposite the other bracket?

A. Yes; I do.

Q. Now, if you had been examining that list, Mr. Barnes, and had noticed those two brackets, what would you then have done?

A. If there had been no other annotation I should not have paid any attention to it.

Q. Would not the brackets themselves call your attention to some particulars or the necessity for further examination?

A. No, sir.

Q. Suppose you had seen those brackets and then seen the annotation that you now see there, and of there having been a faint mark running lengthwise of the page, what would you then have done?

A. I should have supposed that the mark, whatever it was, had been erased and the objection removed, and acted accordingly.

Q. Would you have proceeded to investigate further to see what it was?

A. No, sir.

Q. If such a mark had been put upon it by anybody, by whom would it have been put there in the usual course of business?

A. Well, I suppose by the head of the division, as probably his attention would have been called to any adverse claim that might have been set up against it. He would know of any such claim, whether he made the note himself or directed me to do so.

Q. It would have been made by the head of the division or by yourself?

A. Yes, sir.

163 Q. Now, Mr. Barnes, so far as you recollect, when you examined that list at any time, whether at the date of the listing to the State or any other time—whenever you did examine it—there was no annotation of any kind on it that called your attention to the fact of a conflict?

A. No, sir.

Q. So far as you are concerned, it was, when you examined it, as though it were entirely clear?

A. Yes, sir.

Q. Suppose there had been an annotation on that list of an adverse claim, and upon investigation by yourself you should ascertain that it was an adverse claim initiated subsequently to the selection of the land by the State, you would not then have gone ahead and approved the State selection?

A. Well, it would have depended somewhat on the sort of claim. If it was one for our division to adjudicate, why, of course——

Q. I am speaking now of a claim that is subsequent to the State selection.

Ans. If a mineral question was not involved I would dispose of the adverse claim in the manner before pointed out.

Q. Under the rules, then, all mineral questions in such cases were referred to the mineral division for action? That is because the land in mineral was excepted from the grant?

A. Yes, sir.

Q. Any other adverse claim, if agricultural, what would have been done with it?

A. We should have approved the selection and canceled the adverse claim.

Q. Who wrote that letter of August 28, 1883?

A. I do not know. I think likely I did.

Q. Do you know any reason why at that particular date the fact of the omission of the State agent to sign the list should have become known?

A. I suppose some one called attention to it.

Q. I am asking for your recollection.

A. I do not know.

Q. You recollect no occasion for that letter having been written?

A. No, sir.

Q. Mr. Barnes, do you know anything about any contest in respect to those particular tracts of land pending in any portion
164 of the General Land Office at or about the time when this list was made to the State?

A. No, sir.

Q. When was your attention first called to the fact, Mr. Barnes, of any alleged erasure of pencil marks on the list?

A. I cannot tell; I have no idea; it was some time after the certification of those tracts.

Q. Have you any recollection as to who called your attention to it?

A. No; I have not.

Redirect examination by Mr. BURDETT:

Q. Do you know, Mr. Barnes, under what law, agricultural or mineral, mill-site claims arise?

A. Under the mineral laws.

Q. Do you know in what division of the General Land Office mill-site claims are adjudicated? If so, please state.

A. In the mineral division.

Q. If your attention had been called to the fact prior to certification that there was a mill-site claim in conflict with the selection, would you or your division have undertaken the adjudication of that matter?

A. No, sir; whether the claim had been prior or subsequent we should not have undertaken it, as it was not a matter for our division.

Q. Would you have proceeded in such a case to final certification to the State until such time as the mineral division had adjudicated the mill-site claim?

A. No, sir.

Q. Would it have been proper or orderly in such a case for the pre-emption division to have made any inquiry as to the subsequency or the priority of such mill-site claim?

A. No, sir.

Q. Do you know a Mr. Fox of the mineral division?

A. I do.

Q. I ask you that question to see whether it refreshes your mind as to how you first learned of the failure to sign the selection.

A. No, sir.

165 Recross-examination by Mr. REDINGTON:

Q. Mr. Barnes, do you know whether a mill site is a claim for mineral or agricultural land?

A. Well, I should consider it a mineral claim.

Q. Is it not a fact, under the law, that no mineral land can be taken under a mill site, but that it is a pure agricultural claim?

A. I am not sure as to that, but I know that such matters are referred to the mineral division.

Q. Have you ever had occasion or in the course of your experience have you ever found, except in this case, a mill site in conflict with a State selection?

A. I have no recollection of it.

Q. Now, Mr. Barnes, if you had found such a conflict of a mill site with the selection and upon examination of the law should find out that mineral lands were prohibited from being taken under mill-site applications, and that only agricultural claims could be taken under such an application, and that the mill-site application was subsequent to the State selection, would not the case fall under the rule which you have already referred to on your cross-examination, to wit, that the State selection would be certified and the other application rejected?

A. Well, I should suppose likely it would; but, at the same time, if a case of that kind should come before me, not knowing anything about mill sites, I should make inquiry of somebody that was familiar with them and find out where it did belong.

Q. And if you found out that it was an agricultural claim would it not fall under the other rule?

A. Yes.

Q. You mean in such a case the pre-emption division would proceed to adjudicate the adverse claim rather than the mineral division?

A. No; I do not know as to that, because I do not know where such a claim would properly belong.

166 Q. But I say in case you found it was a mere agricultural claim you would then in the pre-emption division proceed to adjudicate the matter without the necessity of sending it to the mineral division, but in either case it would be an adjudication?

A. Yes, sir.

Q. And if a subsequent application it would be rejected and the State selection allowed?

A. Yes, sir.

Q. Is or is not a State selection in the practice of the General Land Office, and under the law as it is construed there, an appropriation of the public land in the same way as an entry is?

A. Yes, sir.

JAMES J. BARNES.

Subscribed and sworn to before me—

JOHN B. THOMPSON,
Special Examiner.

JOSEPH TYSSOWSKI, a witness produced, sworn, and examined on the part of the plaintiff, says as follows:

By Mr. BURDETT:

Q. Please give us your name, age, and occupation.

A. My name is Joseph Tyssowski; age, 40; and occupation, a clerk in the General Land Office—assistant chief of the mineral division.

Q. How long have you been in the mineral division of the General Land Office. And if you have been its chief state up to what time.

A. I have been in the mineral division of the Land Office since 1881, I think, and was made chief of that division about February, 1883, and remained the chief until about two weeks ago.

Q. Has that division any other designation than that of mineral division?

A. Well, it is sometimes known as the division of mineral claims, and it is designated officially as division "N."

Q. Please look at the paper I now hand you. State whether
167 you have ever seen it before; and, if so, where.

A. (Witness examining paper.) *Ans.* I have seen that before.

Q. Go on and state what it is.

(Objected to.)

A. This paper appears to be an original letter from the register at Eureka, Nevada, dated January 10, 1883, sending up an application for patent, or rather stating that application for patent for the New Philadelphia mill site was presented to that office, and enclosing the application for patent with a number of other papers.

Q. Be good enough to take these papers I now hand you and see if they are the exhibits referred to and enumerated in that letter.

A. The register's letter, dated January 10, 1883, is marked as No. 5870, and I find that number upon one of these papers marked "application for patent for the New Philadelphia mill site;" also upon "proof of posting notice and diagram on claim;" also upon a plat; also upon a paper endorsed "abstract of title;" also upon a paper designated "non-mineral affidavit;" also upon a paper designated "notice of publication in newspaper;" also upon a paper designated "agreement of publisher;" also upon a paper endorsed "affidavit of Wren and Cheney in relation to the rejection of R. and R. of application for patent to the New Philadelphia mill site." The remaining paper handed to me, endorsed as "filed notes of U. S. survey No. 37, T. 8 N., R. 50 E., M. D. M.," does not bear the official number 5870, and I do not know that it was received with said letter of January 10, 1883.

Q. Do the notes in that paper agree with the plat which bears the official number?

(The WITNESS:) That I have just referred to?

(Mr. BURDETT:) Yes.

The witness (after making a comparison) answers: Upon a comparison just made with the field-notes, it does.

Q. There is written on the back of that letter from the register of the land office at Eureka the words in lead pencil, "See note inside." To what note does that reference refer?

168 A. I suppose you notice that there are three notes inside. The reference meant by those words is evidently this: that "by direction of the Commissioner this case must be considered in connection with State selection of the same land list in pre-emption division."

Mr. BURDETT: I now offer in evidence and ask to have fully marked as exhibit in the case the letter and the exhibits which have just been referred to.

Mr. REDINGTON: The introduction of these papers is objected to for the reason that the papers are not exemplified copies of any records of the United States, and, if originals and offered as such, are not produced from the proper custody, but upon statement of counsel appear to be produced from private custody.

Mr. BURDETT: Counsel on the part of the United States, representing the Attorney General, states that these papers are produced here, as understood by him, to be original papers from the files of the General Land Office; that they were forwarded, in the first instance, through the Attorney General to the proper custody of the attorney for the United States for the district of Nevada, and were thence returned for the purpose of taking this testimony through the office of the Attorney General to the custody of the Honorable Z. Montgomery, an assistant Attorney General of the United States, who, upon the written request of the Attorney General, on the 16th instant delivered them to myself as representing the Attorney General in this proceeding.

The WITNESS: I desire to make a statement. I notice upon the letter heretofore referred to of January 10, 1883, in very faint red ink the note "9 papers." Counting the papers that I have already mentioned and the letter as one makes up the sum of 9 papers, exclusive of these field-notes, which would rather indicate that these field-notes did not come up with this letter. I have identified these various papers as coming up with this letter simply by the official number that is indorsed upon each of them, and as to these

169 field-notes I simply don't know whether they did or did not come up with that letter.

Q. I repeat the question, asking what was meant by the words in red pencil, "See note inside." To what note does that refer?

A. I refer to the one in lead pencil. The note in red pencil on the outside of this letter is in my handwriting, and I find inside of the letter a note in my handwriting as follows: "By direction of the Commissioner this case must be considered in connection with State selection of the same land. List in pre-emption division. Dated February 24, 1883. Signed J. T." This is evidently the note referred to.

Q. To whom do the initials "J. T." on that note refer?

A. To myself; they stand for Joseph Tyssowski, and is the way

I have been in the habit of signing most of my notes which are attached in an official way.

Q. When did you make that note?

A. It is dated February 24, 1883, and I presume was made on that day.

Q. Please state how you came to make it, and if upon the particular directions of the Commissioner, what, if any, he gave you.

A. To the best of my recollection and belief, I made it by direction of the Commissioner. I would further state, to the best of my knowledge and belief.

Q. And upon what particular directions, if any, of the Commissioner given you?

(Objected to.)

A. My recollection about the circumstances relating to this case, as far as any interviews with the Commissioner are concerned, is that the Commissioner was anxious to prevent action being taken upon this mill-site case in one division of the office—that is, the mineral division—without at the same time considering fully the case which I understood, or to the best of my remembrance, was pending in another branch of the office. I think I had two
170 or more interviews with the Commissioner on the subject. He called me up there. At one of them I think Mr. Curtis was present. The object of the interviews was to prevent separate action being taken in different divisions of the office concerning that tract of land, and all that I can now recall about it is that he gave me directions or gave Mr. Howes directions; I don't remember which; but the matter was discussed in the conversations in order to have the two divisions act either jointly upon the matter, or both have knowledge of the entire case that was presented in the mineral division and the other division, which I think was the pre-emption division. I say I think the pre-emption, because I am not certain that the State selection case was there at the time that these first notes were made. I think at one of those interviews Mr. Howes was present. It has been so long ago that a good deal of it is not very distinct in my mind.

Q. There is attached to this letter another memorandum in ink in these words: "On motion of Mr. Curtis, and Mr. Ford not objecting, the Commissioner directs that action in this case may be delayed for some time. J. T." Who made that memorandum or note?

A. That memorandum was made by myself. It is in my handwriting and signed by my initials.

Q. You may state any circumstances which you may recollect respecting it.

A. I do not recall anything about that; no; not any more than what is said in it. I am satisfied, however, that it was not made without authority.

Q. Who is the Mr. Curtis and the Mr. Ford referred to?

A. The Mr. Curtis is the Mr. Curtis of the firm of Curtis and Bur-

dett, and the Mr. Ford referred to in this memorandum is the E. C. Ford of this city, formerly chief of the mineral division.

Q. Do you know for whom those gentlemen appeared?

A. I do not.

Q. Did you know at the time for whom they appeared in this matter?

A. I probably did at the time. The fact that the note states that on motion of Mr. Curtis and Mr. Ford not objecting indi-
171 cates to my mind that Mr. Curtis must have represented one side of the case and Mr. Ford the other. I do not now know who Mr. Ford represents, whether the mill site or the other side.

Q. Please state in what division of the General Land Office mill-site claims are adjudicated.

A. In the mineral division.

Q. Where a tract of public land is claimed by two adverse claimants and the claims of one is subject to adjudication in the pre-emption division and the other in the mineral division of the General Land Office, what is the usual mode of procedure in the adjustment of the adverse claims?

The WITNESS: What do you mean by two adverse claimants?

Mr. BURDETT: Where two persons are claiming the same tract of land adversely to each other.

A. You know in the mineral laws two "adverse claimants" may mean different things. The practice would be, according to my knowledge of the Land Office, to have the two divisions of the office act upon the case jointly, or certainly one with the knowledge of the other, so as to have the entire matter presented to the Commissioner.

Q. Will you examine the plat accompanying the application for patent for the New Philadelphia mill site and mining claim and state in what particular subdivision of the public lands the land claimed by that application lies?

A. The plat itself does not disclose, but pasted on the plat is a tracing which indicates that said lot 37 is situated partly in section 33 and partly in section 34, of township 8 N., range 50 E.

Q. Does it indicate the smaller legal subdivisions?

A. The portion in section 34 falling in the S. W. $\frac{1}{4}$ of S. W. $\frac{1}{4}$ and the portion in section 33 falling in the S. E $\frac{1}{4}$ of S. E. $\frac{1}{4}$.

Q. The records of the General Land Office show that on May 3, 1883, the pre-emption division executed a certificate that the E. $\frac{1}{2}$ of S. E. $\frac{1}{4}$ of section 33, township 8 N., range 50 E., and W. $\frac{1}{2}$ of S. W. $\frac{1}{4}$ of section 34, same town. and range, were free from conflict, and inured to the State of Nevada under a selection of lands made by
her under the act of June 16, 1880. Please state whether at
172 that time the application of Messrs. Matthiessen and Ward for a patent for the New Philadelphia mill site and mining claim to which you have referred had been acted on and decided by the mineral division of the General Land Office.

A. I do not know. I would have to examine the docket in the office to say. I cannot recollect.

Q. What official action has been taken in the case?

(Objected to for the reason that it has been shown that there is a record—a docket—containing the information, and the record is the best evidence.

A. The docket in the office will show. I cannot well state without examining the docket.

Q. As appears from the original papers before you?

(Objected to.)

A. As appears from indorsements upon the letter of Janaary 10, 1883, before referred to, a letter was written to E. C. Ford September 4, 1883; a letter was written to Curtis & Burdett September 4, 1883; a letter was written to Curtis & Burdett October 18, 1883; a letter was written to E. C. Ford October 18, 1883, each of these letters being official letters from the Commissioner of the General Land Office or some one acting as Commissioner. Following this letter to Mr. Ford of October 18, 1883, is the indorsement "ref'd to div. G, Nov. 19, 1883," which indicates that this particular letter and its contents were referred to the pre-emption division upon that date.

Q. Did that application for a mill site present such a case under the practice of the General Land Office as to entitle the applicants to a decision on that application prior to the allowance of the claim of the State of Nevada to the same land under a State selection or prior to the allowance of any conflicting claim?

A. I do not know; I have never examined it; I have never examined the mill-site application. You ask a question whether it was entitled to a decision prior to action upon the other. I say I do not know; I have never examined the mill-site application,
173 but according to the practice of the General Land Office, as I understand it, both should have been considered together in order to get an intelligent understanding of what the case was. The point is that where there are two claims pending before the General Land Office involving the same tract of land, although they may be in different divisions of the office, the practice of the office is to consider those cases together and not separately, and I do not know that they are ever considered separately, unless by accident the other is not discovered.

Q. If a decision on the application for the New Philadelphia mill site had ever been made in what division of the office would it have been made?

A. Properly in the mineral division on the mill-site application.

Q. Have you ever examined the records of the mineral division to know whether a decision was ever rendered on the mill-site application?

A. I do not now remember that I ever did, and I do not know that such a decision was ever made. There was such a mulitude of cases of all kinds coming to me as chief of the division that unless I examined the records for that purpose I would not have a personal recollection or knowledge of the matter.

Q. On the back of the letter of the register at Eureka, Nevada, of

January 10, 1883, sending up the application of Messrs. Matthiessen and Ward for patent on the New Philadelphia mill site, are the following words or figures in blue pencil: "Aug. 23, '83. Special. N. C. McF." Do you know what those words or figures mean? And, if so, please state what you know about the matter.

Mr. REDINGTON: I object to that question. I object to the witness saying what any particular paper or endorsement means. The paper speaks for itself.

The WITNESS: Those words appear to be in the handwriting of N. C. McFarland, the former Commissioner of the General Land Office, and, as understood in the office, they mean that this
174 case was to be taken up out of its order ahead of other cases and decided. That is the meaning of the word "special" in this note. I know nothing about why it was put upon the letter. I do not think I was here at that date.

Q. Was the State of Nevada or any one purporting to claim under that State represented by an attorney, so far as the land claimed by Matthiessen and Ward under their mill-site application was concerned? If so, who was such attorney?

A. I do not recollect about that.

Q. I now hand you a paper purporting to be a letter of Ellery C. Ford, of February 8, 1883. Be good enough to look at it, state whether it is an original letter or a copy, and when received in the General Land Office.

(Same objection noted as before by defendant.)

A. This letter, dated February 8, 1883, and signed E. C. Ford, is an original letter, in which he states that he desires to enter his appearance for the claimants of certain lands in sections 33 and 34, T. 8 N., R. 50 E., M. D. M., under State selection list No. 24, filed with the R. and R., Eureka, Nevada, as against the application of F. O. Matthiessen and L. B. Ward for a mill site embracing a portion of said land, and asks for time for examination of papers and the filing of argument. The stamp upon this letter shows that it was received in the General Land Office February 9, 1883.

Mr. BURDETT: That letter I now offer in evidence and ask to have it marked as an exhibit.

(Same objection by the defendant noted as before.)

The letter is here marked by the special examiner "Plaintiff's Exhibit E."

Cross-examination by Mr. REDINGTON:

Q. Mr. Tyssowski, there appears upon the jacket of that
175 paper, "Exhibit D," a note of reference of all the papers to division G. What was the object of that reference?

A. The object of that reference was to turn over this entire matter to division G.

Q. Division G was the division that examined State selections?

A. Division G designates the pre-emption division of the General

Land Office, and one of its branches is the examination of State selections. I think that is correct.

Q. At that time?

A. I think so.

Q. Well, prior to that reference was anybody pressing the consideration of the mill-site case in division N?

The WITNESS: Prior to November 19, 1883?

Mr. REDINGTON: Yes.

Answer. I should say yes.

Q. Can you say who?

A. I cannot, but I should say yes from the fact that the Commissioner's endorsement appears on this letter, making it special, which would not have been made if some one was not pressing it.

Q. What would have been the effect of making that case special in respect to the examination of any other claim?

A. The effect of that order would be to take up this case and examine it in advance of other claims.

Q. How much time, probably, would have been gained by that special order?

A. That would depend upon the condition of the work at that time and the number of other cases made special before this one.

Q. Do you know who procured the Commissioner to make the case special?

A. I do not, sir. I do not think I was in the city at the time that order for special was made. I think I was on my summer vacation, but I am not sure about that.

Q. Mr. Tyssowski, what lands under the law can be included in a mill-site claim as to their character—mineral or agricultural?

A. Non-mineral lands.

Q. Under no circumstances can mineral land be taken under a mill-site claim?

A. No, sir.

176 Q. As to those field-notes in the mill-site case, I understand you to say that you are unable to testify that the paper exhibited to you as the mill-site field-notes did or did not come up with the rest of the papers?

A. I state that merely from this fact, that the official number stamped upon the letter of January 10, 1883, which is number 5870, does not appear to be upon this paper designated as field-notes.

Q. Well, from all the evidence before you and from your recollection you are unable to testify that that paper was the paper sent up with that letter?

A. Outside of what I have stated I know nothing about it.

Q. But you have stated that you are unable to identify this paper as having come up with the letter?

A. Yes, sir; I am not willing to make that unqualified statement. I want to say that on the comparison with Mr. Fox made awhile ago these field-notes correspond with the plat, but I do not know when it was filed nor whether it was sent up with that letter.

Q. Now, I want you to look at the plat, Mr. Tyssowski. Is there

anything in the body of that plat which shows with what legal subdivisions of the townships survey the mill-site conflicts?

A. The legal subdivisions do not appear to be laid down upon the plat itself.

Q. You refer in your direct examination to a tracing which was attached to the plat. That, as I understand you, exhibits the subdivisions. Is there anything to show when that tracing was pasted upon the plat?

A. I find nothing whatever upon the plat to show when it was pasted upon it. There is a line upon this plat which is drawn from post number one of the mill-site claim and is marked S. E. cor. sec. 33, T. 8 N., R. 50 E., bears S. 31° E. 693 feet, from which the *locus* of this mill-site lot could have been fixed.

Q. But it is not fixed on that paper—it is not shown?

177 A. It is shown, as far as it can be, by the line and words descriptive of it I have indicated.

Q. Were the section subdivisional lines shown on the plat?

A. They do not appear on the plat itself.

Q. Without looking at the tracing are you able to say with what subdivisions the mill-site claim conflicts?

A. I could plat it off from that, I think.

Q. I am asking whether without that you can say. You cannot see any lines on the plat?

A. No.

Q. You do not know when that tracing was attached there, of course?

A. No, sir; I know nothing about that.

Q. You have spoken about an interview with the Commissioner or one or more interviews with the Commissioner in which the matter of the examination of this mill-site claim was referred to. Do you know who, if anybody, had requested action upon the mill-site claim at that time?

A. I do not.

Q. Do you recollect independently of your memorandum?

The WITNESS: What memorandum?

Mr. REDINGTON: The one you made there. What was said by the Commissioner upon the subject?

A. I do not recollect any more than what I have said in my direct examination.

Q. Did the Commissioner in this interview give any further or other directions than those which you have incorporated into your written memorandum; and, if so, what?

The WITNESS: To what memorandum do you refer?

Mr. REDINGTON: That is, the memorandum, dated February 24, 1883, signed "J. T.," written in pencil and attached to letter of January 10, 1883.

The WITNESS: Well, I cannot recall with certainty whether he did or not.

Q. Are you familiar, Mr. Tyssowski, with the method pursued in the examination and certifying in division G upon State selections?

A. Not entirely.

Q. Can you state when, if ever, your attention was first directed to the fact that there was a State selection upon these particu-
178 lar tracts in controversy and with reference to which you have testified?

A. I cannot state when, but I do know that in the interview had with the Commissioner there was a reference made to the fact that there was some State claim to this same land.

Q. Did you at any time during the pendency of this application in division "N" communicate that fact to Mr. Howes with any request that he should note a conflict as against the State selection?

A. I cannot recall that, but I think I had interviews with Mr. Howes about the case.

Q. Well, have you any recollection whatever as to ever having called his attention to that fact for that purpose?

A. I have no distinct recollection about it.

Redirect examination by Mr. BURDETT:

Q. Do you feel in anywise certain that you had conversations or interviews with Mr. Howes relative to this general subject-matter as early as the date of either of these memorandums?

A. As to the date I do not recollect, but the interviews I had were upon the days I had the interviews with the Commissioner. I am quite definite about that.

Q. Were these memorandums, dated respectively March 9 and February 24, 1883, the result of interviews with the Commissioner?

A. Yes, sir; they were both made by direction of the Commissioner.

Q. In what division of the General Land Office do patents issue for hill-site claims?

A. In the mineral division.

Q. What was the date of the reference of the papers you have recently referred to to division "G?"

The WITNESS: The letter of January 10 and enclosures?

179 Mr. BURDETT: Yes.

The WITNESS: November 19, 1883.

JOS. TYSSOWSKI.

Subscribed and sworn to before me—

JOHN B. THOMPSON,
Special Examiner.

5.14 o'clock p. m.—Adjourned until 8 o'clock p. m.

Met at 8 o'clock p. m., pursuant to adjournment.
Present: The attorneys for the respective parties.

Whereupon DUANE E. FOX, a witness produced, sworn, and examined on the part of the plaintiffs, says:

By Mr. BURDETT:

Q. Mr. Fox, please state your name, age, residence, and occupation.

A. Duane E. Fox; reside in this city; at present am 27 years old; clerk in the General Land Office.

Q. In what branch or division of the General Land Office are you employed and how long have you been employed in that division?

A. "N," division of mineral claims; have been employed there since April, 1882.

Q. Please look as the papers handed you, marked "Plaintiff's Exhibit D," and state whether you have ever seen those papers before; and, if so, where and when.

A. I have seen those papers in the mineral division of the General Land Office in 1883.

Q. On the back of the letter from the local office is written the words and figures "Aug. 23, '83. Special. N. C. McF." Please state whether on that day or at any time subsequent thereto you were given any directions with respect to the new Philadelphia mill-site claim.

A. I first received directions in this case prior to that time; my subsequent directions were simply supplemental to directions received prior to that time.

180 Q. Now, be good enough to state your connection with the case represented in those papers, what directions you received, and what you did in connection therewith. State fully.

A. I find that this letter was received at the General Land Office on January 18, 1883. I find from a note attached to it dated February 24, 1883, that the Commissioner of the General Land Office directed that this case must be considered in connection with the State selection of the same land.

Q. Now, Mr. Fox, in relation to your connection with the case?

A. Yes—you want me to begin at the beginning?

Mr. BURDETT: Yes.

Ans. Well, this was my first connection with the case—reading this note in regard to the list in the pre-emption division. I do not know whether I took this case up for examination at that date or soon after or not. I think that I probably did not, because at that time the business of the office was crowded and I had a great many matters on my desk awaiting action at the time. I find also attached to the paper a note dated March 29, 1883, to this effect: "On motion of Mr. Curtis, and Mr. Ford not objecting, the Commissioner directs that action in this case may be delayed for some time." Whether I had begun to examine the papers or not that note suspended the case and I took no further action in it, to the best of my recollection, until the Commissioner had put the note already referred to of August 23rd on the back of the letter. After that time I must have taken the case up for examination—probably within a few days. The list was shown by the first note referred to to be in the pre-emption division. The first thing that I did in connection with the case was to get the list. On obtaining the list I discovered that it was not signed by the selecting officer; whereupon I returned it to Mr. Howes, with a statement that I could not act on the case in that shape. I returned the list to division G for further disposition,

and at a later date I notified Curtis & Burdett—that is, I wrote a
181 letter signed by the Commissioner notifying them—that by letter "G," which was the letter of the pre-emption division of August 28, 1863, the office had returned list No. 24, embracing the said State selection, to the register and receiver at Eureka for correction. Now, I cannot tell any more about it without refreshing my recollection from the papers. I find afterwards that I advised Curtis & Burdett on October 18, 1883, that list No. 24, embracing said State selection, had been returned to the office. Now, shortly afterwards—that is, dated October 18—shortly after that time I must have taken the case up for further examination. I do not remember whether in the course of that examination I consulted the tract books, but I discovered that the patent had issued on the selection or it was discovered by somebody else; but I understand that to have been the fact. Of course, patent having issued for the land in controversy, all further examination of the mill-site case in division "N" was stopped. So far as I remember, I took no further action, except to refer the papers in the mill-site case to division "G" on November 19, 1883.

Q. Do you know whether, after the discovery of the fact that final title had issued to the State for these tracts, anything further was done by way of forwarding the mill-site claim?

(Objected to by the defendant.)

A. I do not know whether anything further was done. I do not know now. I might, by turning to the records, find out that fact.

Q. Do you know whether or not any patent has ever issued on the mill-site claim?

(Objected to by the defendant.)

A. I do not. I cannot say without referring to the records of the General Land Office.

Mr. BURDETT: I will want you to look up the records, and will call you or Mr. Tyssowski hereafter. You will especially ascertain
182 whether anything further was done other than that which you have already stated.

Q. Be good enough to look at the letters now handed you, and to which you have already referred, and state whether they are original letters from the General Land Office and by whom they were prepared.

A. Yes, sir; I prepared the letters and they were signed by the Commissioner of the General Land Office.

Mr. BURDETT: I offer them in evidence and ask that they be marked Plaintiff's Exhibit F and Plaintiff's Exhibit G.

The letter from the Commissioner of the General Land Office to Curtis & Burdett, dated Sept. 4, 1883, is hereby, by the examiner, marked "Plaintiff's Exhibit F."

The letter from the Commissioner of the General Land Office to Curtis & Burdett, dated October 18, 1883, is here by the examiner marked "Plaintiff's Exhibit G."

Q. When attention was called by you to the want of signature of the selecting agent, were you advised in any manner that a final certification had been made of these lands?

A. I was not.

Q. Can you state who you consulted with respect to the matter at that time in the pre-emption division?

A. I think the chief of that division, Mr. Howes.

Q. Now, I will ask you to simply identify a paper here which is among these original files. Please look at the paper now handed you and state what it is and what it contains—just in a word.

Mr. REDINGTON: The introduction of these papers is objected to upon the grounds previously stated to the introduction of Plaintiff's Exhibit D.

Ans. This is a letter from Curtis & Burdett to the Commissioner of the General Land Office entering their appearance as attorneys for the mill-site applicants and enclosing evidence of their citizenship—one letter and two enclosures.

183 Mr. BURDETT: I now offer that letter and the enclosures in evidence and ask to have it marked as an exhibit in the case.

Mr. REDINGTON: The introduction of these papers is objected to upon the same ground last before stated.

The letter from Curtis & Burdett to the Commissioner of the General Land Office, dated January 23rd, 1883, is here by the examiner marked "Plaintiff's Exhibit H."

Cross-examination waived.

9.15 o'clock p. m.—Adjourned until Monday, January 25th, 1886, at 10 o'clock a. m.

Met Monday, January 25th, 1886, at 10 o'clock a. m., pursuant to adjournment.

Present: S. S. Burdett, Esqr., on behalf of the plaintiff, and E. C. Ford, Esqr., and James K. Redington, Esqr., on behalf of the defendant; whereupon the examination of Duane E. Fox is continued as follows:

184 By Mr. BURDETT:

Q. Have you examined the records of the General Land Office, particularly of the mineral division, since the adjournment on Monday last, for the purpose of ascertaining what action, final or otherwise, has been taken on the application of Matthiessen and Ward for a mill site?

A. Yes, sir.

Q. Will you state in what condition you find the case to be?

Mr. REDINGTON: That is objected to.

A. I find on referring to the docket of contested cases, volume 6, that the case of Matthiessen and Ward against the State of Nevada

was referred to division "G" on November 19, 1883. The docket does not show any action subsequent to that time in the mineral division.

Q. What is the present condition of the case of Matthiessen and Ward—the mill site—that is, the present condition in the General Land Office of the case of Matthiessen and Ward?

(Objected to.)

A. I cannot tell because the case was referred to division G.

Q. So far as you know, it remains in division "G?"

Objected to.

A. I have no information to the contrary. The docket shows that the case was referred to that division, and does not show that it has been returned.

Cross-examination by Mr. REDINGTON:

Q. Mr. Fox, what kind of a book is this docket that you speak of?

A. It is a book in which all contests involving mineral questions between parties other than the Government are entered. It
185 shows the title of the case and the papers received in the case and the action of the office upon it.

DUANE E. FOX.

Subscribed and sworn to before me—

JOHN B. THOMPSON,
Special Examiner.

Adjourned until 4 o'clock p. m. on January 26, 1886.

Met Tuesday, January 26th, 1886, at 4 o'clock p. m., pursuant to adjournment.

Present: Counsel for the respective parties.

Documentary Evidence.

Whereupon Mr. Burdett, for the plaintiff, introduced in evidence a certified copy, under the hand and seal of the Commissioner of the General Land Office, dated January 26, 1886, of circulars of the General Land Office dated October 29, 1881, April 27, 1880, September 23, 1880, May 9, 1882, September 22, 1882, December 9, 1882, and November 16, 1882, the same being the official instructions in force from September, 1882, to June, 1883, inclusive, and requests that said certified copy be marked as an exhibit in the case.

(The introduction of this paper is objected to by the attorney for the defendant.)

The paper is here marked by the Commissioner "Plaintiff's Exhibit I."

Mr. BURDETT: I also offer in evidence certified copies from the records of the General Land Office, under the hand and seal of the Commissioner, dated January 26, 1886, of a letter from the Commis-

sioner of the General Land Office to the Secretary of the Interior dated January 19, 1884, and a letter from the Commissioner
186 of the General Land Office to the register and receiver at Eureka, Nevada, dated October 26, 1880, and request that this certified copy be marked as an exhibit in the case.

(The introduction of this paper is objected to by the attorneys for the defendant.)

The paper above referred — is here by the commissioner marked "Plaintiff's Exhibit K."

Adjourned until Saturday, January 26, 1886, at 11 o'clock a. m.

JANUARY 30, 1886.

There being no appearance of counsel for either of the parties, the hearing is, at the written request of Mr. Burdett, on behalf of the plaintiff, adjourned by the Commissioner until Monday, February 1, 1886, at 11 o'clock a. m.

FEBRUARY 1, 1886—11 o'clock a. m.

There being no appearance of counsel, owing to the sickness of Mr. Burdett, representing the Attorney General of the United States, adjourned until Tuesday, February 2, 1886, at 11 o'clock a. m.

FEBRUARY 2, 1886—11 o'clock a. m.

Owing to the continued sickness of counsel representing the Attorney General, adjourned until Wednesday, February 2, 1886, at 11 o'clock a. m.

FEBRUARY 3, 1886—11 o'clock a. m.

Counsel representing the Attorney General of the United States being still confined to bed from sickness, adjourned until Thursday, February 4, 1886, at 11 o'clock a. m.

187 FEBRUARY 4, 1886—11 o'clock a. m.

Owing to the continued illness of counsel representing the Attorney General of the United States, adjourned until Friday, February 5, 1886, at 11 o'clock a. m.

FEBRUARY 5, 1886.

Met at 11 o'clock a. m., pursuant to adjournment, whereupon the hearing is adjourned until Tuesday, February 23, 1886, at 2 o'clock p. m.

TUESDAY, *February* 23, 1886.

Met at 2 o'clock p. m., pursuant to adjournment.

Present: S. S. Burdett, Esqr., representing the Attorney General of the United States, for the plaintiff, and E. C. Ford, Esqr., and James K. Redington, Esqr., for the defendant.

Whereupon WILLIAM W. CURTIS, a witness produced, sworn, and examined on the part of the plaintiff, says as follows:

By Mr. BURDETT:

Q. What is your name, occupation, and residence?

A. My name is William W. Curtis; I am a resident of the city of Washington; engaged in the business of land attorneys, as a member of the firm of Curtis and Burdett.

Q. Have you been professionally engaged on behalf of Matthiessen and Ward respecting their interests in certain lands in Nevada described as the east half of the southeast quarter of section 33 and the west half of the southwest quarter of section 34, township 8 north, range 50 east?

A. As a member of the firm of Curtis and Burdett, I have.

188 Q. Be good enough to state when your professional connection with the case began and generally what steps have been taken in the case in the General Land Office or elsewhere, so far as you recollect them, giving a reference to any memorandum which you may have in your possession and which relates to the same matter.

A. It was about the first of September, 1882, that we were employed by Matthiessen and Ward, I think through Abbett and Fuller, their attorneys, to look into the condition and status of a certain desert-land entry made by Joseph T. Williams, which Matthiessen and Ward had purchased of said Williams; at least they had the position of assignees of Williams. On examination of the records of the General Land Office in this city I found—for I personally looked after the matter—that the desert-land entry had been canceled, Williams having filed a relinquishment, of which fact I notified Messrs. Matthiessen and Ward or their attorneys in New York, Messrs. Abbett and Fuller, receiving from them immediately information to the effect that they had been notified by advices from Nevada that the State selection had been made.

(Mr. REDINGTON: All those statements are objected to as hearsay matter.)

The witness continuing: On the sixth of September, 1882, I prepared and filed a protest against the allowance of the State selection, a copy of which I have here and which was filed at that date in the General Land Office.

Q. Have you a copy of that paper there?

A. Yes; this is a copy (handing paper to counsel).

Q. Is this paper (taking it) the copy to which you refer?

A. It is.

Mr. BURDETT: I now offer the paper in evidence in connection with the testimony of the witness and ask that it may be marked as an exhibit.

The paper referred to is here by the commissioner marked

189 "Plaintiff's Exhibit L."

The WITNESS: This paper is also an application for the reinstatement of a desert-land entry which had been canceled.

Mr. Burdett here announces that he had requested the General Land Office to furnish certified copies of the foregoing paper, as also others, forming part of the files in the desert-land case of Williams, but that the papers cannot be found there, and that a letter from the Commissioner of the General Land Office setting out the facts would be filed by him in the case.

Mr. REDINGTON: I object to the introduction of the copy until the loss of the original paper is duly proved. I also object to the paper on the ground that it is incompetent of itself and immaterial.

Mr. Burdett, counsel for the plaintiff, states that he will, before the close of the examination, file proper evidence showing that the original paper had been mislaid in the General Land Office.

By Mr. BURDETT:

Q. State what followed this action.

A. I should state that this paper is also an application for the reinstatement of desert-land entry of Williams in the name of Matthiessen and Ward, assignees of Williams. That was followed by careful watching on my part, and between that date and the first of January, 1883, three arguments were filed in the General Land Office—one in September, another in November, and the third in December—in support of the motion made there. At the same time I took special pains and care to see that no inadvertent action was taken on the State selection by frequent conversations with the Commissioner, the head of the pre-emption division, Mr. Howes, and the head of the mineral division, Mr. Tyssowski. A decision on the
motion to reinstate the desert-land case was made by the Com-
190 missioner on the twenty-first of February, 1883, notice of
which we received on the twenty-third of February. From the closing words of that decision we were led to further contest the approval of the State selection, as the decision left that matter for future consideration. On the twenty-fourth of February I went over to see the Commissioner, as also Mr. Howes, the head of the pre-emption division, Mr. Tyssowski, of the mineral division, and, I think, Mr. Le Barnes, of the law clerk's office, although I am not so certain as to the latter. On the same day I wrote a letter to Messrs. Abbett and Fuller detailing the circumstances of the visit and what had been done. On that occasion, as on previous occasions, I had taken special pains to urge upon the Commissioner and all others who had anything to do with the case the importance of putting such safeguards on the papers in the case as would prevent any independent action—any separate action—by either of the divisions—the one having charge of the mill-site case, which had theretofore reached the office, or the other having charge of the State selection; and I had such positive assurances at that time from all the parties and especially from the Commissioner that such annotations had been made as would effectually guard against any such independent action that I rested easy and satisfied in my mind.

Q. You speak of a letter you wrote on the twenty-fourth day of February, 1883, to Abbett and Fuller. Have you a copy of that letter? If so, state what it is and whether it is press copy or otherwise.

A. It is a press copy, in the copy books of the firm of Curtis and Burdett. I have the copy here (witness looking at letter book).

Mr. BURDETT: I offer that original press copy in evidence and ask to have it marked as an exhibit in the case.

The paper in question is here cut from the letter-press copy book and is by the commissioner marked "Plaintiff's Exhibit N."

191 (The introduction of this paper is objected to by the defendant on the ground that it is incompetent and immaterial.)

Q. Have you further letters or memorandums tending to show action taken by you with respect to the consideration of these cases?

A. After the decision in the desert-land case all efforts were directed towards defeating the State selection and in asserting the right of Matthiessen and Ward to make a mill-site location. This matter was argued—I think the argument was filed in April—in which the two cases were treated together as one case. I find that in August following—and I remember it distinctly—we received a letter from L. B. Ward. I called upon the Commissioner to urge action in the case. Upon the letter which I took over the Commissioner made the following endorsement: "My understanding is that this case was to be taken up.—N. C. McF." I showed that to Mr. Tyssowski, the chief of the division where the mill-site case was then resting. He was not satisfied with it, but went down to the Commissioner, where a conference was held, I think, between Mr. Howes, Mr. Tyssowski, the Commissioner, and myself, and an endorsement was then made on the papers in the case for the reason that this, being a private letter to the firm, could not be left with the case—at least I did not want it to go there—and instructions were then given to have the case taken up and a decision written up.

Q. Did you or not, at that time, write any letter which refreshes your mind as to what further happened upon the presentation of the letter from Ward to the firm of Curtis and Burdett, to which you have referred?

A. I wrote a letter to Mr. Ward of that date—of August 23—a copy of which I have here.

Q. Is it a press copy?

A. Yes, sir; it is a press copy—type-written—of a letter addressed to Mr. Ward and signed by myself personally.

192 Q. Please state, generally, the contents of it.

(Objected to by counsel for defendant.)

A. It is simply corroborative of what I have stated here now in my testimony as to the instructions given by the Commissioner to the chief of the mineral division to consult with the chief of the preemption division as to the State selection.

Mr. BURDETT: I now offer in evidence the letter referred to of L. B. Ward to Curtis and Burdett, of August 23, 1883, and the press copy of the letter answering the same, to which the witness has just referred, signed by W. W. Curtis. I offer them together.

(Mr. REDINGTON: I object to the introduction of both papers on the ground that they are incompetent and immaterial, and that they are inadmissible.)

The papers referred to are here by the commissioner marked "Plaintiff's Exhibit N."

Q. You may state whether any steps were taken by you or within your knowledge on the part of your client to obtain any separate or independent action, either on the mill-site application or on the State selection case.

A. No, sir. On the contrary, the effort was always, so far as my own efforts were concerned, and I had the most to do with the matter, to have the two cases acted on together. They are so argued in all the briefs filed in the cases.

Q. When did you first learn that the tracts in controversy had been certified to the State of Nevada?

A. Some time in December, 1883.

Q. You may state whether or not the Commissioner of the General Land Office, in any of the conversations you had with him respecting the matter, ever intimated a knowledge on his part
193 that there had been a certification of the land prior to December, 1883.

(Objected to by the defendant.)

A. No, sir. On the contrary, he found it out—at least my first conversation with him on the subject was about the time that it became generally known in the General Land Office, and in all conversations with him at that time he expressed surprise and indignation at what had been done, coupled with a proffer to do anything that could be done to remedy the matter.

Q. When did you first see list No. 24, which is the Plaintiff's Exhibit B in this case?

A. I cannot remember ever having seen that until after the discovery was made of the fact that the lands had been certified.

Q. What was the condition of the list, so far as any annotation is concerned or any erasure of an annotation, when you first saw it?

A. Substantially as it is now, the words "mill site" being partly obliterated.

Q. Did you at any time ever make or cause to be made or have anything to do with the making of that erasure?

A. I did not. I could have had no motive for so doing. It would have been to the injury of the parties I represented to have done so.

Counsel for the defendant here waives present cross-examination of this witness, and it is stipulated by the counsel for the respective parties that the witness, Mr. Curtis, may be recalled for cross-exam-

ination by the defendant during the taking of the testimony for the defendant in this case, if the defendant so desires.

WILLIAM W. CURTIS.

Subscribed and sworn to before me—

JOHN B. THOMPSON,
Special Examiner.

Adjourned until Wednesday, February 24, 1886, at 4 p. m.

194 FEBRUARY 24, 1886—at 4 o'clock p. m.

Met pursuant to adjournment; whereupon a further adjournment was had until February 25th, 1886, at 9 o'clock a. m.

FEBRUARY 25TH, 1886.

Met at 9 o'clock a. m. pursuant to adjournment; whereupon a further adjournment is had until 1 o'clock p. m.

Met at 1 o'clock, February 25th, 1886, pursuant to adjournment.

Present: S. S. Burdett, Esqr., representing the Attorney General, for the plaintiff, and E. C. Ford, Esqr., and James K. Redington, Esqr., for the defendant.

Whereupon LEBBEUS B. WARD, a witness produced, sworn, and examined on the part of the plaintiff, says as follows:

By Mr. BURDETT:

Q. Please state your name, age, residence, and occupation.

A. Lebbeus B. Ward; 52 years old; civil engineer; Jersey City, New Jersey.

Q. State if you are the Lebbeus B. Ward of the firm of Matthiessen and Ward, who have interests in certain lands in Nevada in controversy in this suit.

A. I am the Lebbeus B. Ward who is interested in this suit with Mr. Matthiessen.

Q. Be good enough to state your connection with the tract of land in controversy in this suit and in what your interests in those tracts consists and how acquired. Give a general narration.

(Question objected to by counsel for the defendant.)

A. I became interested in the lands by purchase jointly with Mr. Matthiessen from the receiver of the New Philadelphia Silver
195 Mining Company, and also by purchase made from the sheriff of Nye county, Nevada. These purchases were made in the year 1881. Mr. Matthiessen and myself had been interested as stockholders in the New Philadelphia Silver Mining Company, a company which had purchased the land in controversy from Joseph T. Williams in 1879 and erected a quartz mill upon it. The company became embarrassed and went into the hands of a receiver, and the property was first sold in Nevada for its debts under certain suits and judgments, and subsequently sold by the receiver in New York, the company being a New York corporation. At the time of

our purchase we knew from the records of Nye county, Nevada, and from hearsay that Mr. Williams had made the sale of the land in controversy to the New Philadelphia Silver Mining Company and had been paid five thousand dollars for his title. It was on the faith of that deed that we made the purchase of the property.

Q. Can you state what the improvements were on the tract of land in controversy and their nature and extent or approximate value?

(Question objected to by counsel for the defendant.)

A. I believe the improvements to consist of a quartz mill—I have never been on the property and can only speak from information—a ten-stamp quartz mill, with some buildings, which were erected at an expense of fifty thousand dollars or upwards.

Q. Do you know what title Williams had to this tract of land when he sold it to the New Philadelphia Company, and whether he sold by deed and the date of the transaction and the consideration paid him?

(Mr. REDINGTON: I object to that on the ground that it is not, of course, the best evidence of the fact which it attempts to reach.)

A. The title that Mr. Williams had, or estate in the land, we understood was a desert-land entry which he made in May,
196 1879. He conveyed to the New Philadelphia Company July 26, 1879, by deed, in which he covenanted that he had full power and right to convey; the consideration named in the deed was five thousand dollars, and I believe that that sum was actually paid him. It has never been denied, to my knowledge.

Q. Do you know what finally became of the Williams title under the desert-land entry? If so, state, and in connection with that statement also state what steps you may have taken personally, if any, looking to the securing of the title for yourself and Matthiessen in that tract of land.

(Objected to by the defendant.)

A. We were informed by our agent at Hot Creek in May, 1882, that Mr. Williams expressed his willingness to make a formal relinquishment of his desert-land entry at the expiration of the three years from the date of the entry within which the law required him to perfect his desert-land improvements; that he was willing to do this in such a way and at such a time as would enable us to take the land by State selection. We were unable to learn that Mr. Williams carried out his intention, although we requested him to do so, until in September. The last of August or first of September following inquiry at the Land Department at Washington showed that the relinquishment had been made some weeks previous and the entry canceled. On telegraphing to Eureka, Nevada, we learned that a State selection—an application for the land by the State of Nevada—had been made immediately upon the cancellation of the desert entry, which selection was made in behalf of Mr. Williams. I came to Washington about the fifth or sixth of September, 1882,

and in company with Mr. W. W. Curtis called upon the Commissioner of the General Land Office, and in conversation stated the facts to him which I have just given. On the same day—the sixth of September, if I remember rightly—an application in writing was
197 made to the Commissioner of the General Land Office in the name of Matthiessen and Ward, by Curtis and Burdett, attorneys, to have the desert-land entry reinstated. That application was subsequently, as I am informed, refused by the Commissioner. I was in Washington again, I think, about the end of September, 1882, in connection with this business, but I am unable to say whether I saw the Commissioner at that time or not. My present impression is that he was absent from Washington. I have no recollection of having seen the Commissioner again until July, 1883. At that time Matthiessen and Ward had an application pending for a five-acre mill site, including the mill building spoken of in my previous testimony.

I would like to add that in the early part of 1882—I think in the month of February—I requested Messrs. Abbett & Fuller, our attorneys in New York, to communicate with the Commissioner of the General Land Office and inform him that Matthiessen and Ward had certain rights in lands at Hot Creek, specifying the lands which I referred to—among others, the mill site of eighty acres which had been conveyed to the New Philadelphia Company by Williams, as described in my previous testimony, and that I know that such a letter was written.

Q. That is all right. The papers I will file will show that. You may state, if you can, Mr. Ward, about the date of the erection of the stamp-mill to which you refer, in whose possession it has remained, and who possesses and controls it now.

(Question objected to by counsel for defendant.)

A. The stamp-mill, as I was informed, was erected in 1879, immediately after the deed given by Williams to the New Philadelphia Company of the land on which it was built. It remained in the possession of the New Philadelphia Silver Mining Company until they stopped doing business—at the end of the year 1880, I think it was—
and since that time it has been in the possession of our agent.
198 Q. Mr. Ward, there is a certain paper in this proceeding known as list No. 24, one of the files in the case in the General Land Office. Be good enough to state whether you have ever seen that paper or had it in your custody or control at any time.

A. I have never seen the paper which you refer to.

Q. I now hand you the paper referred to (handing the witness Plaintiff's Exhibit B), and you may now state again whether you have ever seen that particular paper before or know anything in respect to it.

The WITNESS (examining paper): I am certain that I have never seen this paper before. Do you mean whether I have ever heard of it?

Mr. BURDETT: Yes; whether you have ever heard of it in connection with a certain alleged erasure.

(Objected to by counsel for the defendant.)

A. I presume this is the list of lands applied for by the State of Nevada, which includes the land in controversy. If so, I learned in December, 1883, for the first time that the lands which were applied for had been certified to the State of Nevada, and in connection with that information that there had been an erasure made of words on the margin of the list—of an annotation showing that the lands contained a mill site.

Q. You may now state whether or not you ever made or caused to be made any erasure of the words mill site or other erasure whatever on that paper.

A. I have never caused any such erasure to be made and I never knew that the annotation had been placed on the paper until the date that I have just mentioned, December of 1883. Upon learning of the fact of the certification of the land of the State of Nevada I came at once to Washington, and had an interview, in company with Mr. Curtis, with the Commissioner of the General Land
199 Office, and found that the only method of relief would be by a suit brought to set aside the certification. The Commissioner of the General Land Office had, I was informed, represented the facts to the Secretary as soon as he learned of them, and the Secretary had applied to the Governor of Nevada for a return of this certified list. That application, however, failed, as the Governor of Nevada thought he had no power to return it, and a short time afterwards the Commissioner, in pursuance of what he thought to be his duty, as professed to me, represented the facts to the Secretary of the Interior and requested that a suit be instituted in the name of the United States to annul the certification of the land. Those facts were known to me at the time.

Cross-examination by Mr. REDINGTON:

Q. What connection, Mr. Ward, had you with the New Philadelphia Mining Company prior to its insolvency?

A. I was a shareholder.

Q. Had you any further connection with it than as a shareholder?

A. No, sir.

Q. What personal knowledge have you of any purchase made by that company of Williams?

A. None other than I have stated in my direct examination.

Q. Well, what was that?

A. I was informed by the managers of the company that they had made such purchase.

Q. Do you know anything further, individually, about it than that?

A. No.

Q. Did you ever see any deed or conveyance from Williams to the New Philadelphia Mining Company?

A. Not during the period of the company's existence, I think.

Q. Have you ever seen any such deed?

A. Not the originals.

Q. Have you ever seen a copy of such deeds?

A. Yes, sir.

200 Q. How do you know you saw a copy of the deed?

A. I saw a certified copy taken from the Nye county, Nevada, records.

Q. Have you got that copy with you?

A. No, sir.

Q. Where is it?

A. The one I have seen is in New York.

Q. You never saw the original?

A. I think I must correct my testimony. I believe the original deed is in my possession in New York. I first got a certified copy previous to the purchase from the receiver and afterwards—that is, after the sale by the receiver—the title deeds of the company were handed over to us.

Q. Then you have in New York now the original of the deed which you say was made by Williams to the company, and also an exemplified copy of that deed from the Nye county, Nevada, records?

A. Yes, sir.

Q. Do you know of any other instrument, either of a deed or a contract, between Williams and that company?

A. There is a bond given by Williams to Mr. Trowbridge in Nevada which I have seen and which, I think, I have in my possession, or a certified copy of it, I am not sure which.

Q. Do you know anything, either hearsay or otherwise, of the relations between Williams and the New Philadelphia Mining Company or what was done either before or after the execution of the deed to which you refer, except as told by some one else?

A. No, sir.

Q. Did Williams ever tell you anything about it?

A. I had a conversation with Williams in December, 1883, in New York, but I do not think that that transaction was discussed then.

Q. Do you know, of your own knowledge, whether the New Philadelphia Mining Company ever paid any money to Williams at all?

A. Not of my own knowledge.

Q. Do you know, of your own knowledge, whether there was subsisting any contract between Williams and the New Philadelphia Mining Company, the terms of which were not complied with by the New Philadelphia Company?

201 A. The bond given by Williams to Mr. Trowbridge, which was assigned to the New Philadelphia Mining Company, was a bond for the sale of mines and a mill site. It was not a contract, but an option to purchase at a certain price and time.

Q. You have no other knowledge of business transaction between the New Philadelphia Mining Company and Williams?

A. No, sir; I would also say that in a conversation had with Mr. Williams in December, 1883, I think the question was put to him whether he was disposed to pay back the five thousand dollars he

received from the New Philadelphia Company, and he did not at that time deny having received it.

Q. Did you agree to return the five thousand dollars?

A. No, sir; the conversation related to some sort of a compromise which he urged on Matthiessen and Ward.

Q. Now, that you have got on that question of compromise, who first, as between your firm and Williams, broached the matter of the compromise? Did the proposition of compromise come from Williams or your firm?

A. It came from Williams.

Q. Did you not send for Williams on that occasion and ask him to come to your office in New York?

A. Mr. Williams requested Mr. Trowbridge, the person to whom this bond was originally given, to write to us saying that he would be glad to come to New York to negotiate a compromise.

Q. How do you know that Williams ever said anything of that kind to Trowbridge?

A. Well, Mr. Trowbridge wrote us to that effect.

Q. All you know as to whether Williams told Trowbridge anything of the sort is what Trowbridge said to you. Is not that so?

A. I say Trowbridge wrote us to that effect; that is all.

Q. Well, to return to the original question, is it not a fact that you sent word to Williams in New York requesting him to come and see you at your office?

A. No, sir; I never did.

Q. That is not a fact?

A. No, sir.

Q. Did you ever send word to Williams while he was in
202 New York requesting him to meet you anywhere?

A. No, sir.

Q. Neither you nor your firm?

A. No, sir.

Q. Did he ever meet you in respect of a compromise?

A. Yes, sir. Mr. Williams came to New York at his own suggestion, without any request or hint from us. The first I knew of his coming was learning from Mr. Abbett, our counsel, that Williams had called upon him, and my recollection is that Mr. Abbett suggested to him to call again and he would endeavor to have me present, and being somewhat urged by Mr. Abbett I went to his office at the time mentioned.

Q. You still say, Mr. Ward, that you never sent—neither you nor your firm—to Williams requesting an interview on this subject?

A. I never did.

Q. You say that Mr. Williams, then, met you with reference to the matter. That is a fact, is it?

A. Yes, sir.

Q. No compromise was effected, I suppose?

A. None.

Q. For what reason?

A. The terms that Williams proposed appeared to Mr. Abbett to

be very unreasonable, and he so stated to Mr. Williams, and that we could not accede to them.

Q. Is it not a fact that you proposed terms to Williams which he refused to accept?

A. The conversation between the two parties was conducted by Mr. Abbett, as representing Matthiessen and Ward, and they were entirely unable to agree upon terms which would be mutually satisfactory. That is about the whole of it.

Q. Now, Mr. Ward, will you please answer the last question? Just give me a straightforward answer.

The WITNESS: Repeat the question.

Q. (After question had been repeated.) Is that a fact or not?

A. I proposed no terms whatever to Williams.

Q. Did your counsel?

A. Mr. Abbett made suggestions, but they were contingent entirely upon a further consultation with Matthiessen and Ward.

203 Mr. Matthiessen was not present and nothing could be done without his knowledge and consent.

Q. Did you not offer Williams four thousand dollars to effect a settlement?

A. Yes, sir; I think that a proposition of compromise was made in writing after Williams' visit to New York, in which one of the conditions was the payment to him of four thousand dollars.

Q. Which proposition he refused to accept. Is that a fact?

A. We never heard from him directly in reply to it.

Q. Now, what sort of a title was it, Mr. Ward, you understood Williams had sold to the New Philadelphia Mining Company? What was it?

A. I did not know at the time what title Williams had. Subsequently we learned that it was a desert-land entry, and I supposed that at the time of the purchase from the New Philadelphia Mining Company it was an assignable interest.

Q. For what purpose did the company buy the premises—for the purpose of reclaiming the lands under the desert-land law?

A. I think the deed speaks of it as lands sold for the purpose of erecting a mill.

Q. Did they ever occupy it for any purpose except to erect a mill?

A. Not so far as I ever learned.

Q. Have you or your firm, as successors of the New Philadelphia Mining Company, ever used it for any other purpose?

A. No, sir.

Q. Then, if I understand you, Mr. Ward, the New Philadelphia Mining Company became insolvent, and your firm purchased whatever interest they had in this land derived from Williams. Is that right?

A. Yes, sir.

Q. And Williams then relinquished his desert-land entry to the United States?

A. That is my information.

Q. Now, with respect to his relinquishment, what, at its date, was your title or your interest in the premises?

A. Such as I have described in my direct examination.

204 Q. You had previously to that time purchased from the New Philadelphia Company these premises through insolvency proceedings, as I understand?

A. Yes, sir.

Q. Have you ever seen this land?

A. No, sir.

Q. How much of this land did the New Philadelphia Company occupy?

A. Their buildings are all included, as I am informed, within the five-acre tract, which has been applied for under the mineral-land laws as a mill site. They have also a ditch one-half of a mile long.

Q. Did they ever occupy more of the premises than you have just described?

A. I think not.

Q. Have you?

A. No, sir.

Q. Now, is the whole of that mill site upon the land described in this suit?

The WITNESS: Tell me what the lands described in this suit are and I will tell you.

The COMMISSIONER: The lands described in this bill are the E. $\frac{1}{2}$ S. E. $\frac{1}{4}$ of section 33 and the W. $\frac{1}{2}$ of the S. W. $\frac{1}{4}$ of section 34, township 8 N, range 50 E., M. D. M.

A. It is.

Q. Are you quite sure of that?

A. Yes, sir; from the maps and diagrams.

Q. Matthiessen and Ward have filed a mill-site application for this tract, have they not?

A. Yes, sir.

Q. What is the date of that application?

A. It is, I think, January 10, 1883.

Q. What, if anything, prior to that time, had Matthiessen and Ward done in or about those terms in connection with the mill site? Had you ever done anything more than hold possession of it through an agent?

A. We purchased it.

Q. Subsequent to that purchase and up to the time when you applied for it as a mill site had you done any work upon
205 it at all or done anything with it except to hold possession through an agent?

A. I have not.

Q. Then at the date of your mill-site application the only title you held to these premises you held by virtue of Williams' deed to the New Philadelphia Company upon an entry which he had relinquished. Is that true?

A. We held it under the deed of Williams to the New Philadelphia Silver Mining Company.

Q. Did you hold it under any other title whatever?

A. Only those which I have described.

Q. Have you described any other than the deed of Williams to the company?

A. Yes, sir; the deed of the New Philadelphia Mining Company to the receiver and the receiver to us.

Q. You held at the time of that mill-site application no title except the title coming originally from Williams to the New Philadelphia Mining Company?

A. Yes, sir.

Q. And you had never done anything with the claim as a mill site up to that date except to hold possession?

A. No, sir.

Q. What use have you made of the claim since that application to enter it as a mill site?

A. We have had no beneficial use of it.

Q. None at all?

A. No, sir.

Q. Who has had possession of the premises in controversy in this suit outside of the mill site?

A. It is vacant land.

Q. Is it not in the possession of Williams?

A. I have been told at one time that part of his garden was within the lines of the land, but whether that is a fact or not seems to be in doubt.

Q. I am referring now not to the limits of the mill site, but the two eighty acres described in this suit. Now, with respect to the land included in that one hundred and sixty acres, but outside of the mill site—in whose possession is it?

A. It is vacant land, as I understand it, but possibly Williams' garden fence takes in a fraction of it.

206 Q. Is it not now and has it not been in the possession of Williams?

A. I think not; it has been unfenced land, as the maps lead me to suppose.

Q. Did you ever make any location of this particular land as a mill site?

A. I do not know that I understand you, sir; the word "location" is technical, I suppose.

Q. Did you ever file any paper in the office of the local mining or county recorder in respect of a mill site?

A. Not to my knowledge.

Q. Well, you would know if you had done it, would you not?

A. I should.

Q. Do you know of its being done by your firm?

A. Not to my knowledge; it may have been done by our agent without his notifying us of having done so.

Q. Did you, prior to the application which you made for this land as a mill site, ever in any form set up a claim to it as a mill site?

The WITNESS: Under the mineral laws, do you mean?

Mr. REDINGTON: Under any laws as a mill site.

A. The deed of Williams to the New Philadelphia Mining Company——

Mr. REDINGTON (interrupting): I am not asking about that. I am asking whether you or your firm set up prior to the application any claim to this land as a mill site.

The WITNESS: Will you allow me to answer the question without further interruption?

Mr. REDINGTON: I will allow you to answer the question with great pleasure if you will only attempt to answer it and not something else.

The WITNESS: I repeat what I said before: The deed of Williams to the New Philadelphia Mining Company conveys the land for the purposes of a mill site. The correspondence had with the General Land Office refers to it in the same terms, and a copy of the
207 deed was attached to the letter which Abbett and Fuller addressed to the Commissioner in February, 1882.

Mr. REDINGTON: The examiner will please repeat the question that I have asked, and I again ask the witness to answer it.

The question was here repeated as follows:

"Q. Did you, prior to the application which you made for this land as a mill site, ever in any form set up a claim to it as a mill site?"

A. None other than what I have already answered.

Q. Did you ever file, either in the General Land Office or in the office of the register and receiver, any application to enter this land as a mill site prior to the date that you have already mentioned?

A. No, sir; January, 1883.

Q. At that date the original desert land entry of Williams had been relinquished by Williams and canceled upon the records and the lands listed to the State of Nevada, had it not?

The WITNESS: I do not understand the phrase "listed to the State of Nevada."

Mr. REDINGTON: I mean certified.

A. Williams' desert-land entry had been relinquished, and the application of the State of Nevada had been made, as I am informed; but the land was not, according to my information, certified to the State of Nevada until a later date.

Q. Did you file your mill-site application prior or subsequent to the time when the Commissioner of the General Land Office refused to reinstate Williams' original entry at your application?

A. It was made subsequently to his refusal to reinstate the desert-land entry.

Mr. BURDETT: Mr. Ward, are you sure of that?

A. According to my recollection; I cannot give dates.

By Mr. REDINGTON:

Q. And up to the time of your filing this mill-site applica-
208 tion you were asserting no claim whatever or title to the land, except through the conveyance that you have mentioned originating in Williams? Is that so?

A. We did not. I might add to that, though, that we claimed to be the actual occupants of the land and the sole owners of the improvements upon it, and made that claim known to the General Land Office at various times.

Q. When first?

A. The first communication, I think, was made by the receiver of the New Philadelphia Silver Mining Company, I believe, in June, 1881. The next, as far as my recollection serves me, was the letter of Abbett and Fuller to the Commissioner of the General Land Office in February, 1882.

Q. Those were assertions of a title under the Williams deed, were they not?

A. Yes, sir; and it is also my impression that we claimed as the owners of the improvements placed upon the lands.

Q. Well, I suppose you mean you claimed to own the improvements. Is my understanding correct?

A. Yes, sir; and made that claim known to the General Land Office.

Q. But the claim was made under the improvements?

A. Yes, sir.

Q. Now, you know nothing of your personal knowledge about those improvements at all, do you?

A. I have never seen them.

Q. In May, 1882, you seem to have known that your title to that land was invalid. Is that so?

A. I think it was in 1882 that we learned through the firm of Curtis and Burdett that the rights of Williams in the desert-land entry were not assignable, or that such was the ruling of the Land Department.

Q. Then I am right in saying, am I not, that in May, 1882, you knew your title was invalid?

A. The information that I have just referred to was subsequent to September, 1882?

Q. If you did not know in May, 1882, that your title was invalid, why were you endeavoring to procure a relinquishment from Williams in order that you might perfect in some way the title?

A. We knew that the desert land improvements, which
209 were required by the law had not been made as regards the eighty acres conveyed by Williams to the New Philadelphia Mining Company, and we desired to secure them through the State of Nevada, a mode of obtaining lands to which there were no such conditions attached, as there would be to a desert-land entry.

Q. What method of acquisition do you understand that to be?

The WITNESS: What does "that" refer to—the appropriation through the State of Nevada?

Mr. REDINGTON: Yes.

The WITNESS: The land laws of the State of Nevada providing for the acquisition of public lands from the State.

Q. Do you mean the same title that Williams afterwards got from the State?

A. I really do not understand you, sir.

Mr. REDINGTON: Well, I cannot make myself any plainer.

The WITNESS: The same means of acquiring the lands which Williams resorted to.

Mr. REDINGTON: Yes; that is what I mean.

The WITNESS: Yes, sir; that is what I mean.

Mr. REDINGTON: Well, you have answered the question.

The WITNESS: That is an answer; is it not? I mean the same means of obtaining the lands to which Williams subsequently resorted.

Q. In other words, in May, 1882, with knowledge of a defect in your title, you endeavored to obtain the same title in the same way Williams got the title. Is that true?

A. In May, 1882, we desired to obtain the land in the same way in which Mr. Williams has undertaken to obtain it.

Q. But failing to so obtain the title through the State of Nevada, you afterwards, subsequent to Williams' relinquishment, filed an application to enter the land for a mill site. That is true?

A. We made no application to the State of Nevada, sir.

210 Q. Failing in 1888 to make any arrangement with Williams by which he relinquished his invalid desert-land entry in order to enable you to obtain title through the State; failing in all this and subsequent to Williams' actual relinquishment to the Government, you applied to locate the land and enter it as a mill site?

A. We did, in January, 1883.

Q. But that was subsequent to the application of Williams to the State, which finally resulted in the same title which you were seeking in 1882?

A. It was subsequent to Mr. Williams' application to the State, but not, as I understand it, to his obtaining title. I suppose the title is still undetermined.

Q. You know that the land had been listed and certified to the State of Nevada upon his application, do you not?

A. Yes, sir; that is my understanding.

Q. Now, with reference to this list No. 24. On either of the occasions that you went with Mr. Curtis to the General Land Office upon this matter, did you, with him, meet a gentleman named Mr. Howes?

A. I did.

Q. Did you go with Mr. Howes to his room?

A. I think that I saw him in his room; that is my recollection.

Q. Did you leave the room and go with him into the hall for any purpose?

A. No, sir.

Q. If anybody supposes that you were present with Mr. Curtis at the time when this alleged erased memorandum was put upon list No. 24, they are mistaken about that?

A. I am quite positive that I never knew of any annotation being placed on the list.

Q. Then you are quite certain that that annotation was not placed on the list in your presence?

A. I feel quite certain of that.

Q. After you filed your mill-site application you were quite anxious, I suppose, to have it patented?

A. Yes, sir.

Q. What, if any, measures did you take with reference to
211 accomplishing that object in the General Land Office.

A. I came to Washington in July, 1883, and, I suppose, had an interview with the Commissioner of the General Land Office at that time, though my recollection about it is not clear.

Q. What date was that?

A. July, 1883.

Q. When did you first know that these lands had been certified to the State of Nevada?

A. In December, 1883.

Q. In December, 1883? When you came to Washington in July, 1883, it was for the purpose of pressing the mill-site application, was it not?

A. That is my impression from recollection, though it is not certain.

Q. Then you saw the Commissioner in respect of that matter?

A. That is my impression, sir.

Q. When next did you come to Washington?

A. In December, 1883.

Q. You were still pressing your mill-site application?

A. I came in consequence of learning that the land has been certified to the State of Nevada.

Q. Up to that time you had simply rested upon your mill-site application, and you were so proceeding?

A. Yes, sir.

Q. You have testified, Mr. Ward, to visiting the Commissioner, and what you were informed the Commissioner had said to the Secretary, and what the Secretary had said, and, if I understood you correctly, that all this had resulted in the Commissioner requesting the Secretary to take some measures by which the title of the State under this list might be vacated. Did you ever make an application to the Department to have such a suit as that brought?

A. When we learned that the Commissioner had represented the facts to the Secretary, a formal letter of Messrs. Abbett and Fuller was, at my request, addressed to the Secretary reciting our connection with the land and our ownership of the improvements, and urging him to take such action as the Commissioner's letter had already suggested.

212 Q. That is, after you had all those various things recited and after you say the Commissioner in some way had been induced to represent to the Secretary that such a thing as this suit was necessary, it was subsequent to the communications had between the Secretary and the Governor of Nevada and the communication of the Commissioner of the General Land Office to the Secretary requesting that this step should be taken to vacate the certification?

A. Yes, sir.

Q. All those steps looking to the annulment or vacation of the certification, then, were taken not at your instance at all. Is that right?

A. Yes, sir. The Commissioner of the General Land Office indicated his intention to take those steps, I think, when I first saw him, in December, 1883.

Q. Without any application on your part that he should do so?

A. I think that it was spontaneous on his part. Of course, it was a step that we desired to have taken.

Q. But you had no application of that kind before him in any way?

A. There was no formal application on file that I recollect.

Q. Have you ever presented such a formal application to the Government?

A. Only the letter of Abbett and Fuller to the Secretary of the Interior.

Q. That is all?

A. That is all, as far as my recollection serves me.

Q. Upon that paper, so far as you were concerned, the suit was commenced?

A. Yes, sir.

Q. What arrangement, if any, have you made with the Government of the United States in respect of the costs of this proceeding?

(Mr. BURDETT: That is objected to as irrelevant and immaterial and as impertinent to any issue in this case.)

A. We have made none.

Q. Have you ever given any bond to the United States or to any officer of the United States indemnifying them for costs in
213 case of defeat in the suit?

Same objection by counsel for plaintiff as above noted.

A. No, sir.

Q. What arrangements, if any, have you made with the United States in respect of the employment of counsel, and by this I do not mean any terms or anything of that sort, but simply what, if any, arrangements you have made with the United States in respect of the employment of counsel.

A. We have made no arrangements with the United States in regard to the employment of counsel.

Q. Who represents you in these proceedings?

A. Do you mean the proceedings to vacate this title?

Mr. REDINGTON: Yes, sir.

A. Abbott & Fuller, Curtis & Burdett, Wren and Cheney, and J. D. Torreyson.

Q. What arrangements, if any, have they with the United States in respect of their representation of you?

(Same objection as before noted by counsel for plaintiff.)

A. None but an amicable arrangement, I suppose, to provide the requisite proceedings.

Q. The suit is carried on, then, as I understand, entirely at the expense of the United States, except so far as you choose to employ and compensate counsel to assist the United States. Is that so?

(Same objection as before noted by counsel for plaintiff.)

A. Yes, sir.

Q. Have your counsel, or any of them, to your knowledge, since the institution of the suit, been in possession of any portion of the Government records connected therewith, either with the application of Williams to the State of Nevada or the application of the State of Nevada to the United States or any papers connected with the mill-site application?

A. Not to my knowledge.

Q. Do you know whether or not, since the letter of Abbett &
214 Fuller to the Department, these papers have been out of the custody of the General Land Office?

A. Not to my knowledge.

Q. Did you ever hear that they had been sent to the register and receiver?

A. Allow me to correct my last answer? They have been, as I understand it, practically all the papers in the custody of the United States district attorney for Nevada. That is the only case in which they have been out of the custody of the land office.

Q. Who is the district attorney for Nevada?

A. Unless he has been removed, it is Mr. Trenmor Coffin.

Q. Is it not a fact that for a month or six weeks all the papers connected with this controversy, including the alleged mutilated list, were in the State of Nevada?

A. They might have been so, as stated in my previous answer.

Q. Is it not true that after their return to Washington from the State of Nevada they were entrusted to the custody of your counsel here, Curtis & Burdett?

A. Not so far as I know, sir.

Q. Do you know they were sent away?

A. No, sir.

Q. Is it not true that during the entire pendency of this case here, so far as the taking of testimony is concerned, that all these original papers have been in the office of Curtis & Burdett, your counsel?

A. I have no knowledge on that point.

Q. While the question of bringing this suit was pending before the Interior Department did your counsel, Mr. Abbett, come to Washington in respect of it?

A. Not to my knowledge. I am quite certain that he did not, or I should have known of it.

Q. Is it not true that he came here on that business and went to the Secretary about it in company with Senator Sewell?

A. Not to my knowledge. I make same reply as last.

Q. If anything of that kind occurred you do not know anything about it?

A. No, sir.

215 Q. Is Mr. Abbett, of whom you are speaking, the ex-Governor Abbett of New Jersey?

A. He is the present Governor.

Redirect examination by Mr. BURDETT:

Q. You say that it was in December, 1883, that Williams was in New York and you saw him at Abbett & Fuller's office. Did you at that time know that the certification of these lands had been made to the State of Nevada?

A. No, sir.

Q. How long before that interview had that certification been made?

A. I am informed that the certification was made in May, 1883.

Q. Was the subject of conversation between yourself and Williams and your attorneys in New York in part these tracts of land?

A. Yes, sir.

Q. Did Williams intimate to you or advise you that months before the title had gone to the State of Nevada for his benefit?

A. He did not. He made no reference whatever to it.

Q. How long were you together on that occasion?

A. About an hour.

Q. Did he during all that time disguise that fact and keep it from your knowledge?

A. He kept it from my knowledge.

Q. Did he say anything which was calculated to put you on your guard in respect to the matter?

A. Not at all.

Q. And when, upon the acceptance of Williams' relinquishment of his desert-land entry, those tracts became public land, who, if any person, had improvements on them?

A. Matthiesen and Ward.

Q. Did the possession of the lands to which you refer continue in them without interruption until the present time?

A. Yes, sir.

Q. You answered to Mr. Redington that your mill-site application was made at a date subsequent to the rejection of your application for the reinstatement of the Williams desert-land entry. State, as near as you can, the date of your application made at the

216 local office for a mill-site entry.

A. I think it was the 10th day of January, 1883.

Q. State now, if you will, the date of the decision of the General Land Office rejecting your application for the reinstatement of the desert-land entry.

A. I have no positive recollection about it, except it is my impression that it was previous to the 10th of January, 1883.

Q. If on inspection of the record of that decision it was found to be in the following February, then was your answer correct or incorrect?

A. I should be governed by the record entirely.

Q. You spoke, then, entirely from your recollection in answering that question?

A. Yes, sir.

Mr. BURDETT: Well, I tell you now that you were mistaken, because it was the 21st of February. What is the value of the improvements owned by you and Matthiessen on the tracts of land in controversy in this suit?

A. We estimate them at fifty thousand dollars, based on their cost.

Q. Has Joseph T. Williams, of the State of Nevada, any pecuniary interest or ownership in those improvements?

A. None whatever.

Q. The acquisition of title, then, by the State of Nevada or by Williams to the tracts of land means the acquisition of title to fifty thousand dollars' worth of improvements belonging to you and Matthiessen?

A. Yes, sir.

Q. *Were* were asked whether the pending suit was begun upon your petition or as the act of the United States. You may state whether you learned from the Commissioner of the General Land Office that that suit was begun as a public duty on the part of the United States and whether you learned from him that it was regarded that a gross imposition and fraud had been imposed on the General Land Office which made such suit necessary.

(Counsel for defendant notes objection to this question.)

A. The Commissioner expressed himself that a great injus-
217 tice had been done to us, and he thought it his duty, inasmuch as it had occurred in the General Land Office, to do all that laid in his power to rectify it.

Q. Mr. Ward, you were asked about the custody of certain papers. Have you any personal knowledge whatever with respect to the custody of any of the official papers belonging either to the files of the General Land Office or to the courts which have to do with this case?

A. I have none whatever.

Recross-examination by Mr. REDINGTON:

Q. This conversation which you had in December, 1883, with Williams, when he so grossly deceived you as to the title which he had to the land, was that a conversation at which his relinquishment of the land to you was talked about in order that you might perfect title under the State of Nevada?

A. No, sir.

Q. That conversation was had in May, 1882?

A. Yes, sir; that conversation with our agent, Gluyas, in Nevada.

Q. Would it have been any objection to you in December, 1883, if you had paid four thousand dollars to Williams and got his title, and then discovered that he conveyed a better title than you thought you were buying?

A. Your question supposes that we made Williams a proposition in December, 1883, to pay him four thousand dollars.

Mr. REDINGTON: You have so testified.

The WITNESS: Such a proposition was made in February, 1884, I think.

Q. Well, then, at the date of the interview in 1883, when, according to my brother Burdett's florid question, you were so grossly imposed upon by Williams, concealing the fact that he had a good title from the State of Nevada, would it have been any particular objection in your mind if you had subsequently discovered that he had got a title and conveyed it to you, of which you did not know at the time you were negotiating?

218 A. In answer to that question I say we are now cognizant of the fact that Mr. Williams had conveyed the land on which this mill was built to another party by a deed dated four years earlier than the one given to the New Philadelphia Silver Mining Company, which will cut that deed out.

Q. Then I now understand that, so far as the title of Williams is concerned, somebody else had a deed prior to yours. Is that so?

A. Yes, sir.

Q. Well, then, at the time you made the mill-site application you did not even have Williams' title?

A. We had the title, as I have stated it.

Q. Under a second deed?

A. Under a second deed.

Q. Williams having previously deeded it to somebody else?

A. Yes, sir; that fact was never communicated to us by Williams, however.

Q. It was a fact, however, was it?

A. Yes, sir.

Q. Now, Mr. Ward, do you own these improvements now on that land?

A. Yes, sir.

Q. Any dispute about that with anybody?

A. Mr. Matthiessen and myself own them.

Q. Does anybody set up any claim against you and Matthiessen to them?

A. No, sir.

Q. Have you paid for them?

A. Yes, sir.

Q. Who did you pay for them?

A. The sheriff of Nye county, Nevada, and the receiver of the New Philadelphia Mining Company.

Q. Is there any claim under this first deed of Willlams?

A. No one has set up a claim, but the deed is there and we presume that Williams will take advantage of it.

Q. Who were present at this conversation had with the Commissioner of the General Land Office in which he expressed himself as of opinion that it was the duty of the United States to bring a suit to set aside the title under the certified list?

A. Mr. Curtis was present with me and no other person was present, except officers of the Land Department.

219 Q. Who were they?

A. It is my impression that Mr. Harrison, the chief clerk, was present.

Q. At this conversation, do you recollect whether any one else was present?

A. I recollect that a Mr. Le Barnes, a law clerk, was called in by the Commissioner, and the form of a letter was discussed with him to be written to the Secretary.

Q. Was anybody representing Williams about?

—. The only occasion I ever saw any one representing Williams was at the time mentioned in my testimony, when I came to Washington in consequence of learning that the certification had been made. I recollect at that time seeing Mr. Ford in the Commissioner's room.

Q. Well, at these various conversations, you and Mr. Curtis called the Commissioner's attention to this matter — no one representing Williams was present?

A. No, sir.

Q. But what the Commissioner knew he knew from the statements made to him by you and Mr. Curtis. Is that so?

A. I have no recollection that any statements were made to him by Mr. Curtis or by me at those interviews in regard to the facts; the facts were of record in the General Land Office.

Q. What were you there for?

A. To ask such action as honor and justice would require.

Q. And you mean to say that you made no statements or inquiry about them?

A. No, sir.

Q. Communicated no facts to him?

A. We did not communicate any. The facts were all public matters, known to him fully.

Q. You simply went into the room, and on entering it, without anything from you, the Commissioner burst out with indignation about this gross fraud which had been perpetrated on you and the Government?

A. He did not burst out; he seemed to feel considerable trouble at the occurrence.

Q. And did it spontaneously the moment he saw you and Mr. Curtis without any preliminary inquiries or suggestions from you?

220 A. My impression is that the Commissioner had determined to take this course before I saw him.

Q. But it required no statement on your part and you made none to bring out this expression of indignation on his part?

A. I had seen the Commissioner two or three times previous to that, beginning in September, 1882.

Q. Yes; but you did not know then that the land was certified to the State?

A. The Commissioner was at those interviews placed in posses-

sion of the facts such as our side had to present, but was fully conversant with them.

Q. I have no doubt of it; but at the same time no one representing Williams was around?

A. That is true. No; except as I have stated.

LEBBEUS B. WARD.

Subscribed and sworn to before me—

JOHN B. THOMPSON,
Special Examiner.

S. S. BURDETT, a witness produced, sworn, and examined on the part of the plaintiff, says as follows:

My name is S. S. Burdett; I am a member of the firm of Curtis and Burdett, of Washington, who are employed on behalf of Messrs. Matthiessen in relation to their controversies in Nevada with Joseph T. Williams; my age is fifty years; my residence the city of Washington, and my occupation a lawyer.

With relation to the papers constituting the record in the matter of the State selection of certain lands in Nevada in controversy in this suit I have to say that I at no time saw or called for any
221 of the papers on file in the General Land Office or Department of the Interior; that I never saw what is known as list No. 24, which is Exhibit B in this case, until the commencement of this suit, and know nothing either of an annotation or erasure connected with the paper.

(Cross-examination waived.)

S. S. BURDETT.

Subscribed and sworn to before me—

JOHN B. THOMPSON,
Special Examiner.

FRANK A. LAW, a witness produced, sworn, and examined on behalf of the plaintiff.

Direct examination by Mr. BURDETT:

Q. State your name, age, occupation, and residence.

A. Frank A. Law; age, 26 years; clerk and stenographer with Curtis & Burdett, attorneys, of this city; residence, Washington, D. C.

Q. State whether you have ever seen a certain paper, being Exhibit B in the case now on hearing, known as list No. 24, and when you first saw it.

A. I never saw the list named until after this hearing began at this office—since the first of January, 1886.

(Cross-examination waived.)

FRANK A. LAW.

Subscribed and sworn to before me—

JOHN B. THOMPSON,
Special Examiner.

222 Mr. BURDETT: I offer in evidence certified copy of the letter of Leon Abbett of February 21, 1882, addressed to the Commissioner of the General Land Office, and the enclosures which accompanied said letter, the same being copy of a deed from the New Philadelphia Silver Mining Company to Henry B. Stanton, receiver; copy of a deed from Garrett and Joslyn to N. S. Trowbridge; copy of a deed from N. S. Trowbridge to the New Philadelphia Silver Mining Company; copy of a deed from Joseph T. Williams to the New Philadelphia Silver Mining Company; copy of an agreement *from* Joseph T. Williams and wife and Lafayette Joslyn; copy of a deed from William F. Ernst to Joseph T. Williams, and copy of a deed from Henry B. Stanton, as receiver of the New Philadelphia Silver Mining Company, to Franz O. Matthiessen and L. B. Ward, all being certified under the hand and seal of the acting Secretary of the Interior, dated February 24, 1886.

(The introduction of this certified copy is objected to by the attorney for the defendant on the ground that the same is incompetent, irrelevant, and immaterial.)

The copy referred to is here by the commissioner marked "Plaintiff's Exhibit O."

Mr. BURDETT: Referring to my announcement made at the session of February 23rd, 1886, that I would offer proof of the loss of the original of the protest filed by Curtis & Burnett September 6, 1882, against the allowance of the State selection in list No. 24, I now offer a certified copy of a letter dated February 25, 1886, and addressed to me as special counsel for the United States in this case and signed by the acting Commissioner of the General Land Office, said certified copy being dated February 25, 1886, and bearing the seal of the General Land Office and the signature of the acting Commissioner thereof.

(The introduction of this paper is also objected to by counsel for defendant because incompetent, irrelevant, and immaterial.)

The paper referred to is here by the commissioner marked "Plaintiff's Exhibit P."

223 Mr. BURDETT: I also offer in evidence a certified copy from the records and files of the General Land Office of a letter from Henry B. Stanton to the Commissioner of the General Lond Office, dated June 20, 1881, said certified copy being under the seal of the General Land Office and signed by the acting Commissioner thereof.

(Counsel for defendant notes same objection as before.)

The paper referred to is here by the commissioner marked "Plaintiff's Exhibit Q."

Mr. BURDETT: I also introduce in evidence a copy of a letter from the Commissioner of the General Land Office to Leon Abbett, dated March 9, 1882, said copy being certified under the seal of the General Land Office and signed by the acting Commissioner thereof under date of February 25, 1886.

(Counsel for defendant notes same objection as before.)

The paper is here by the commissioner marked "Plaintiff's Exhibit R."

Mr. BURDETT: I also offer in evidence a certified copy of a letter, dated May 23, 1882, from the Commissioner of the General Land Office to L. B. Ward, said copy being certified under the seal of the General Land Office and signed by the acting Commissioner thereof under date of February 25, 1886.

(Counsel for defendant notes same objection as before.)

The paper is here by the commissioner marked "Plaintiff's Exhibit S."

Mr. BURDETT: I also offer in evidence a certified copy of a letter from the Commissioner of the General Land Office to Henry B. Stanton, dated August 14, 1883, said copy being under the seal of the General Land Office and signed and certified by the acting Commissioner thereof under date of February 25, 1886.

(Counsel for defendant notes same objection as before.)

224 The paper referred to is here by the commissioner marked "Plaintiff's Exhibit T."

Mr. BURDETT: I also offer in evidence a certified copy of a letter from the Commissioner of the General Land Office to the register at Eureka, Nevada, dated September 11, 1882, said copy being certified under the seal of the General Land Office and signed by the acting Commissioner thereof under date of February 25, 1886.

(Counsel for defendant notes same objection as before.)

The paper referred to is here by the commissioner marked "Plaintiff's Exhibit V."

Mr. BURDETT: I also offer in evidence a certified copy of a letter from the Commissioner of the General Land Office to Curtis & Burdett, dated February 21, 1883, said copy being certified under the seal of the General Land Office and signed by the acting Commissioner thereof, dated February 25, 1886.

(Counsel for defendant notes same objection as before.)

The paper referred to is here by the commissioner marked "Plaintiff's Exhibit W."

The counsel for the plaintiff here announces testimony-in-chief closed.

225 DISTRICT OF COLUMBIA, *City of Washington*, } ss:

I, John B. Thompson, special examiner or commissioner, appointed by the circuit court of the United States for the ninth circuit and district of Nevada, hereby certify that the foregoing testimony was taken down in short-hand in the presence of and from the statements of the witnesses; that, it having been by me reduced to writing on the type-writer, it was then and there by me read over to the witnesses and by them subscribed in my presence and in the presence of the counsel for the plaintiff and of the counsel for the

defendant who were then and there attending, each of said witnesses having been by me first duly sworn to testify the truth, the whole truth, and nothing but the truth touching the matters in issue in said cause.

I further certify that I am not of counsel for any of the parties to the said cause or in any manner interested therein.

JOHN B. THOMPSON,
Special Examiner or Commissioner.

Endorsed: Circuit Court of the United States for the dis-
226 trict of Nevada. United States *vs.* Jos. T. Williams. Testimony for plaintiff, taken before John B. Thompson, special examiner. Published by order of the court and filed November 1, 1886. T. J. Edwards, clerk.

227 PLAINTIFF'S EXHIBIT A.

C. DEPARTMENT OF THE INTERIOR, M. E., N. H.
W. O. C GENERAL LAND OFFICE, D. K.
T. G. *January 7th*, 1886.

I, Wm. A. J. Sparks, Commissioner of the General Land Office, do hereby certify that the annexed copies are true and literal exemplifications of the official records and original papers on file in this office hereinafter mentioned, to wit: So much of approved list 2, Eureka district, Nevada, of selections of lands under the act of June 16, 1880, as relates to tracts selected by original list number 24 of said district; letter from this office to the officers of said district, dated Feb. 21, 1883, respecting desert-land entry 158, said district; letter to them, August 28, 1883, and their reply of Sept. 26, 1883, respecting said original list; and the following telegrams and letters relating to said approved list: Office telegram to the Governor of Nevada, Dec. 11, 1883, and his telegram in reply, Dec. 13, 1883; telegram of the said Governor to Secretary Teller, Dec. 15, 1883, and his letter to the Secretary, Dec. 18, 1883; letter from Messrs. Curtis and Burdett, Dec. 20, 1883, and office letter of Dec. 29, 1883, to Geo. W. Merrill, and his reply thereto of Dec. 31, 1883.

228 In testimony whereof I have hereunto subscribed my name
[L. S.] and caused the seal of this office to be affixed, at the city of Washington, on the day and year above written.

WM. A. J. SPARKS,
Commissioner of the General Land Office.

228a *List No. 2, exhibiting the tracts of public lands situated in the district of lands subject to sale at Eureka, Nevada, which have been selected for the State of Nevada under the provisions of the act of Congress approved June 16th, 1880, entitled "An act to grant to the State of Nevada lands in lieu of the 16th and 36th sections in said State."*

Date of selection.	No. of list.	Description of tracts.	Section.	Town.	Range.	Area of tracts.	Area for which accepted by State.	Remarks.
Jan'y 3d, 1882	15	x x x x	x	x	x	x	x	
Feb'y 2d, "	16	x x x x	x	x	x	x	x	
March 2d, "	17	x x x x	x	x	x	x	x	
April 5th, "	18	x x x x	x	x	x	x	x	
May 2d, "	20	x x x x	x	x	x	x	x	
June 2d, "	21	x x x x	x	x	x	x	x	
July 3d, "	22	x x x x	x	x	x	x	x	
Aug. 2d, "	23	x x x x	x	x	x	x	x	
Sept. 2d, "	24	N. E. ¼ and S. ½ of N. W. ¼	34	37 N.	59 E.	240.00	240.00	
" " "	"	N. ½ of S. E. ¼ and N. ½ of S. W. ¼	34	"	"	160.00	160.00	
" " "	"	E. ½ of S. E. ¼	33	8 "	50 "	80.00	80.00	
" " "	"	W. ½ of S. W. ¼	34	"	"	80.00	80.00	
" " "	"	S. W. ¼ of S. E. ¼ and S. E. ¼ of S. W. ¼	14	20 S.	53 "	80.00	80.00	
" " "	"	W. ½ of S. E. ¼	15	"	"	80.00	80.00	
" " "	"	N. E. ¼ and N. E. ¼ of S. E. ¼	22	"	"	200.00	200.00	
" " "	"	E. ½ of N. W. ¼	22	"	"	80.00	80.00	
" " "	"	N. W. ¼ of N. E. ¼ and N. W. ¼	23	"	"	200.00	200.00	
" " "	"	W. ½ of N. E. ¼ and N. E. ¼ of S. E. ¼	6	37 N.	61 "	120.50	120.50	
" " "	"	N. ½ of N. W. ¼ and S. E. ¼ of N. W. ¼	24	39 "	51 "	120.00	120.00	
" " "	"	S. W. ¼ of N. W. ¼	15	44	"	40.00	40.00	
Oct. 2d, "	25	x x x x	x	x	x	x	x	
		x x x x	x	x	x	x	x	
		Total area	.....	.....	.....	19,653.89	19,653.89	

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE, *May 4th*, 1883.

It is hereby certified that the tracts described in the foregoing list are embraced in the original lists now on file in this office of lands selected in the Eureka district, Nevada, by a duly authorized agent of said State, under the provisions of the act of Congress approved June 16th, 1880, above cited. It is further certified that said tracts have been examined and compared with the township plats and tract books of this office and are found to be subject to selection and free from conflicts; and it is therefore recommended that the list, embracing 19,653.89 acres, be approved, subject to any valid interfering rights which may have existed at the date of selection, and to the right of way of the N. C. railroad as to the following tracts: Lot. 4 and S. E. ¼ of N. W. ¼, sec. 2; S. ½ of N. W. ¼, sec. 11, and N. W. ¼ of N. E. ¼, sec. 14, T. 23 N., R. 43 E.

N. C. McFARLAND,
Commissioner.

DEPARTMENT OF THE INTERIOR, *5th May*, 1883.

J. K. McC.:

The foregoing list, embracing 19,653.89 acres, is hereby approved, subject to any valid interfering rights which may have existed at the date of selection; also subject to the right of way of the N. C. railroad as to the following tracts: Lot 4 and S. E. ¼ of N. W. ¼,

sec. 2; S. ½ of N. W. ¼, sec. 11, and N. W. ¼ of N. E. ¼, sec. 14, T. 23 N., R. 43 E.

M. L. JOSLYN,
Acting Secretary.

GENERAL LAND OFFICE, *May 3d*, 1883.

The tracts embraced in the *following* list have been carefully examined and are found to be free from conflicts and to inure to the State for the purposes indicated.

J. J. BARNES.
HENRY HOWES,
Chief of Pre-Emption Division.

Endorsed: Copy. List No. 2 of lands selected for State of Nevada under act of June 16, 1880, as certified and approved May 5, 1883.

229 Copy.

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,
WASHINGTON, D. C., *Feb.* 21, 1883.

Messrs. Curtis & Burdett, Washington, D. C.

GENTLEMEN: On September 6, 1882, you filed a motion in this office to reinstate Eureka, Nevada, desert-land entry No. 158, made by Joseph Williams May 19, 1879, and cancelled by relinquishment August 4, 1882.

You also desired that your letter should be treated as a protest against the approval of the selection made by the State of Nevada upon the application of the said Williams, which application embraces a certain eighty-acre tract in question. In this proceeding you appear as attorneys for Messrs. F. O. Matthiessen and L. B. Ward, who claim to have derived certain interests in said land from Williams through intermediate parties. Mr. Williams, by his attorney, protests in his turn against reinstatement of his desert-land entry, which he states he voluntarily relinquished, for the reason that he could not comply with the law. You file statements
230 showing the nature of the transaction between the New Philadelphia Silver Mining Company and Mr. Williams, and a copy of a deed from Williams purporting to convey to said company whatever rights he possessed to the eighty acres in question, the consideration mentioned being the sum of $5,000. You state that the land is used as a site for a stamp mill, which has been erected thereon at a cost of over $50,000, and that by the failure of Williams to obtain title under his desert-land entry and his ultimate relinquishment of that entry your claimants have been defrauded.

Mr. Williams, upon his own part, submits a statement of the business transactions referred to, and sets up certain claims of his own against opposite parties to the individual controversy. With those personal matters this office can have nothing to do. The only questions that can arise in respect to desert-land entry No. 158 are whether said entry was properly canceled; and, if so, whether there is good

cause shown for its reinstatement or any proper application before me which could be considered in that behalf?

The relinquishment and cancellation of the entry are in
231 due form and all the proceedings appear to have been regular.

It is admitted by the party to the entry that the land was not reclaimed. He does not ask for the reinstatement of his entry, and no other person is authorized to make such application in his name.

Neither does any cause appear why the entry should be reinstated on its merits.

This office cannot undertake to enforce the obligations of private contracts by attempting to compel a party to take title to land which he does not desire and to which he has no legal claim. It is an established principle in the administration of the land laws that purchasers before patent take with notice of all defects and of the contingency that title may never be perfected. They are not innocent purchasers, and if their conveyances prove empty they have no recourse upon the Government to give substance thereto. The doctrine laid down by Mr. Justice Miller in the case of Root *vs.* Shields (Woolworth, C. C., 342) has been uniformly recognized and followed as the correct rule of law applicable to such cases. The question of the validity of the State selection will be determined in due
232 course of action thereon by this office.

Very respectfully, N. C. McFARLAND,
Commissioner.

Enclosure.

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,
WASHINGTON, D. C., *Aug. 28th*, 1883.

Register and receiver, Eureka, Nevada.

GENTLEMEN: I herewith return for the signature of the selecting agent list No. 24 of selection by the State of Nevada under the 2,000,000 acres grant, filed in your office Sept. 2d, 1882, the same having been omitted from the printed application thereon.

You will cause the omission to be supplied and thereafter return the list to this office, referring to this letter.

Very respectfully,

N. C. McFARLAND,
Commissioner.

233 UNITED STATES LAND OFFICE,
EUREKA, NEVADA, *Sept. 26th*, 1883.

Hon. Com'r G. L. O., Washington, D. C.

SIR: I herewith return list No. 24 of selections made by the State of Nevada under the act of June 16th, 1880, with the signature of the selecting agent affixed, as required by your letter "G" of August 28th, 1883.

Very respectfully,

F. H. HINKLEY, *Register.*

Telegram.

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,
WASHINGTON, D. C., *Dec.* 11, 1883.

Governor of Nevada, Carson City, Nevada:

East half southeast quarter section thirty-three and west half southwest quarter section thirty-four, township eight north, range fifty east, inadvertently approved May third last, in clear list number three, Eureka, Nevada, under two-million-acre grant.

234 Please return approved list.

N. C. McFARLAND.

235 EXECUTIVE DEPARTMENT, GOVERNOR'S OFFICE,
CARSON CITY, NEVADA, *December 18th*, 1883.

Hon. H. M. Teller, Sect'y of the Interior, Washington, D. C.

SIR: After telegraphing to you, to the U. S. surveyor general at Reno and the land office at Eureka, and after full consultation with the attorney general and State register of the land office, we think we are in possession of sufficient facts to understand the present condition of the rights of claimants to the east half of southeast quarter of section thirty-three and west half of southwest quarter of section thirty-four, township eight north, range fifty east, to determine our proper course in the matter. If the title to this land was exclusively in the State of Nevada I would not hesitate to return to you the clear list for the cancellation of the land before mentioned; but as a citizen of this State has taken the necessary steps to purchase this land and can any day pay up the balance & demand a patent, I consider the matter as having gone beyond my control, and am there-

236 fore reluctantly compelled to decline to return you the clear list.

I am greatly strengthened in this course by reading your opinion in the case of "The Southern Minnesota Railway Extension Co. *vs.* Kufner," of Oct. 22d, 1883. I see no other course than to let a court of equity determine the right to this land.

Respectfully, J. W. ADAMS, *Governor.*

Endorsed: Dec. 27, '83. Refer'd to the Com. of G. L. Off. H. M. Teller.

Curtiss & Burdett, attorneys in land cases and solicitors of claims. Office, No. 925 F street, N. W.

WASHINGTON, D. C., *December 20th*, 1883.

Hon. N. C. McFarland, Commissioner of the General Land Office.

SIR: Referring to the application of Franz O. Matthiessen and Lebbeus B. Ward for a patent for the New Philadelphia mill-site claim, Eureka land district, Nevada, we have the honor to invite your attention to the fact that the land embraced by that

237 mill site lies partly in the east half of the southeast quarter of section 33, township 8 north, range 50 east, Mt. Diablo me-

ridian, and partly in the west half of the southwest quarter of section 34.

We are advised by our clients that the extension of survey of the five acres into section 34 was rendered absolutely necessary in order to conform the mill site to the practical requirements of the business of milling ores and the configuration of the ground.

We refer to this matter in order that in the event of proceedings being instituted to set aside the certification of lands in said sections 33 and 34 to the State of Nevada in May last the east half of the southeast quarter of section 33 and the west half of the southwest quarter of section 34 may be included in such proceedings.

Very respectfully, CURTIS & BURDETT.

Endorsed: Mr. Howes would like to see you about this. L. H. Dec. 21, '83.

238 Copy.

G. DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,
WASHINGTON, D. C., *Dec. 29th*, 1883.

Geo. W. Merrill, Esq., land agent for State of Nevada, Washington, D. C.

SIR: I enclose herewith copy of a letter received from the Governor of Nevada, under date of the 18th instant, in reply to the several telegrams from the Department and this office, in which he was requested to return to this office Eureka clear list No. 2 of selections made by the State of Nevada under the grant of June 16, 1880 (which was approved by the Secretary May 5th, 1883), for the reason that certain tracts, viz., E. ½ of S. E. ¼ sec. 33 & W. ½ of S. W. ¼ sec. 34, t'p 8 N., R. 50 W., were inadvertently embraced therein, the right to the same being involved in a contest initiated by the New Philadelphia Silver Mining Company and pending at the date of the approval of said list.

In view of the fact that the conclusion arrived at by the Governor relative to the proper action to be taken by him in this matter are at variance with what I was led to believe (from an interview had with you) they would be, I would respectfully request to be
239 advised in writing whether or not you have received any communication from him of a later date than the 18th instant which would indicate a disposition on his part to either return said list, as requested, or to relinquish to the United States the title the State of Nevada may have received to said tracts through said approval.

Very respectfully, L. HARRISON,
Acting Commissioner.

WASHINGTON, D. C., *Dec. 31st*, 1883.

Hon. L. Harrison, acting Commissioner G. L. O., Washington, D. C.

SIR: Referring to your communication "G" of Dec. 29, 1883,

will state that no communication from the Governor of later date than the 18th inst. has been received by me.

Sufficient time has not elapsed in which to receive reply to the proposition referred to in our interview. As soon as received I will at once advise you of the nature of the reply.

Very respectfully, GEO. W. MERRILL,
Land Agent for Nevada.

240 Endorsed: Plaintiff's Exhibit A. John B. Thompson, special examiner. Filed Nov. 1, 1886. T. J. Edwards, clerk.

241 PLAINTIFF'S EXHIBIT B (WASHINGTON).

List No. 24, exhibiting the tracts of public lands situated in the district of lands subject to sale at Eureka, Nevada, which have been selected for the State of Nevada under an act of Congress approved June 16, 1880, entitled "An act to grant the State of Nevada lands in lieu of the sixteenth and thirty-sixth sections in said State."

No. application.	Part of section.	Section.	Township. North.	Township. South.	Range east.	Area of tract. Acres.	Area of tract. 100ths.	Remarks.
								N. & E.
	N. E. ¼ of ——	34	37		59	160	00	36-84.
	S. E. ¼ of N. W. ¼	34	37		59	40	00	36-84.
	N. ½ of S. ½	34	37		59	160	00	36-84.
	S. W. ¼ of N. W. ¼	34	37		59	40	00	36-84.
	E. ½ of S. E. ¼	33	8		50	80	00	97-23 } See letter
	W. ½ of S. W. ¼	34	8		50	80	00	97-24 } to Leon Abbett, C.
								S. & E.
	S. W. ¼ of S. E. ¼	14		20	53	40	00	17-185. M'ch 9, 1882.
	S. E. ¼ of S. W. ¼	14		20	53	40	00	17-185. Do.
	W. ½ of S. E. ¼	15		20	53	80	00	17-185.
	N. E. ¼ of ——	22		20	53	160	00	17-188.
	N. E. ¼ of S. E. ¼	22		20	53	40	00	17-188.
	E. ½ of N. W. ¼	22		20	53	80	00	17-188.
	N. W. ¼ of N. E. ¼	23		20	53	40	00	17-188.
	N. W. ¼ of ——	23		20	53	160	00	17-188.
								N. & E.
	W. ½ of N. E. ¼	6	37		61	80	50	55-86.
	N. E. ¼ of S. E. ¼	6	37		61	40	00	55-86.
	N. ½ of N. W. ¼	24	39		51	80	00	34-104.
	S. E. ¼ of N. W. ¼	24	39		51	40	00	34-104.
	S. W. ¼ of N. W. ¼	15	44		51	40	00	60-41.
	W. ½ of S. E. ¼	7	44		50	80	00	60-231.
						1,560	50	Subject to D. L. 387.
						80		
						1,480	50	

STATE LAND OFFICE,
CARSON CITY, NEV., *Aug. 31st*, 1882.

I hereby apply in behalf of the State of Nevada for the tract de-

scribed in this list as being selected for said State under the act of Congress approved June 16, 1880.

A. J. HATCH,
Selecting Agent,
By I. N. FASSETT, *Deputy.*

UNITED STATES LAND OFFICE,
EUREKA, NEV., *Sept.* 16, 1882.

I hereby certify that the foregoing list was filed in this office on the 2d day of Sept., 1882, and that the selections are correct, and that no valid conflicting right is known to exist, and that the legal fees thereon, amounting to $24.00, have been paid by the State.

F. H. HINCKLEY, *Register.*
H. CARPENTER, *Receiver.*

[Endorsed:] 6. List No. 24. Department of the Interior, L. & R. R. Div. Received January 10, 1884. 405. State of Nevada. Two-million-acre grant. List No. 24, Eureka land district. List No. —. Dated Sept. 2d, 1882. No. acres, 1,560 $\frac{50}{100}$. Posted February 7th, 1883. J. A. H. "2." 1 W. 392,433-1. "Plaintiff's Exhibit B." John B. Thompson, special examiner. Filed Nov. 1, 1886. T. J. Edwards, clerk.

242 PL'FF'S EX. C (WASHINGTON).

Curtis & Burdett, attorneys in land cases and solicitors of claims.
Office, No. 925 F street N. W.

WASHINGTON, D. C., *April 4th,* 1883.

Hon. N. C. McFarland, Com'r of the General Land Office.

SIR: We have the honor to submit herewith a protest and argument in support thereof against the approval of the selection by the State of Nevada, under the act of Congress approved June 16, 1880, of the east half of the southeast quarter of section 33, township 8 north, range 50 east, Mount Diablo meridian, Nevada. A copy of this paper has been served upon the counsel for the claimant under the State, as will more fully appear from his endorsement.

Very respectfully, CURTIS & BURDETT,
Attorneys for Matthiessen & Ward.

Before the Commissioner of the General Land Office.

In the matter of the application of the State of Nevada to select, under the act of Congress approved June 16, 1880, the east
243 $\frac{1}{2}$ of the southeast $\frac{1}{4}$ of section 33, township 8 north, range 50 east, Mount Diablo meridian, Nevada.

Curtis & Burdett, attorneys for Matthiessen & Ward.

Before the Commissioner of the General Land Office.

In the matter of the application of the State of Nevada to select, under the act of Congress approved June 16, 1880, the east ½ of the southeast ¼ of section 33, township 8 north, range 50 east, Mount Diablo meridian, Nevada.

Now come Franz O. Matthiessen and Lebbeus B. Ward, by Curtis & Burdett, their attorneys, and protest against the approval of said State selection, and for grounds of protest allege and show as follows:

1. That on May 19, 1879, John T. Williams made desert-land entry No. 158, embracing said tract.

2. That on July 26, 1879, he, in consideration of $5,000 paid him by the New Philadelphia Silver Mining Company, conveyed to that company by deed said E. ½ of the S. E. ¼ of sec. 33, 8, 50, together with certain water rights and privileges thereto appertaining.

3. That said company, relying upon the good faith of Williams to perfect his title under the desert-land act and thereby that of
244 his assignee and grantee, immediately went into possession of the premises and erected thereon a stamp-mill and other valuable improvements at a cost of over $67,000.

4. That in September, 1881, Matthiessen and Ward became the owners for full value of all the rights, property, &c., of said mining company, and at once went into possession, which they have since continuously maintained.

5. That some time before the period prescribed by law for making final proof on said entry had expired Matthiessen and Ward became convinced that Williams intended to break faith with his assignees and to take measures to defeat their interest in the land and deprive them of their valuable improvements thereon; that accordingly they, through their duly constituted representative and agent, made application to the register of the United States land office at Eureka, Nevada, in which district the land is situate, to be advised of any action taken by Williams in the matter of his said entry; that on July 25, 1882, being unadvised of any such action, said agent and representative addressed to the register at Eureka a letter inquiring whether there was "any change" in the matter of said entry
245 since his inquiry of May 15, 1882; that on August 3, 1882, the register replied in writing as follows: "Mr. Williams informed me that he would try and procure the cancellation of his desert-land entry. We have received no notice as yet of the cancellation of said entry." See Exhibits "A," "B," "C" hereto.

6. That in his said letter of August 3, 1882, said register suppressed the truth and misled said agent in this, that on June 9, 1882, the formal written relinquishment dated May 20, 1882, of the entry of Williams was filed in the local office, which fact, and the further one that the relinquishment had been duly forwarded by the local office to the General Land Office, the said register knew he had never communicated to said agent or to Matthiessen and Ward.

7. That on August 12, 1882, the order of the Commissioner cancel-

ing said desert-land entry of Williams was received and noted at the local office at Eureka, on which day and for a long time prior thereto Matthiessen and Ward were and since continuously have been in the open, notorious, and visible possession of said E. ½ of S. E. ¼, 33, 8, 50, and the valuable improvements, &c., thereon.

8. That on August 14, 1882, notwithstanding the fact of
246 such occupation and appropriation of said land, and that Matthiessen and Ward had been unable to obtain from the register at Eureka any information touching any action had by Williams or by the local officers as to his desert-land entry, the said officers accepted from W. W. Bishop, Esq., attorney for said Williams, an application by the selecting agent of the State of Nevada to select said land under the act of Congress approved June 16, 1880.

9. That this application was based upon one dated May 20, 1882, made by Williams to the State authorities to so select said land, said application of Williams being of even date with his relinquishment to the United States of his desert-land entry.

10. That the application of said selecting agent bears date July 29, 1882, on which day it was delivered to said Bishop as attorney for said Williams.

11. That, as the necessary result and clear sequence of these facts, said E. ½ of the S. E. ¼ of sec. 33, 8, 50, was not unappropriated non-mineral public land on August 14, 1882, when the application to take it as a State selection was made.

12. That under the true construction of the act of June
247 16, 1880, only such lands may be selected by the State of Nevada as were subject to the disposing power of Congress at the date of the act.

13. That the E. ½ of the S. E. ¼ of sec. 33, 8, 50, being on said June 16, 1880, embraced by a valid and subsisting entry which segregated the land from the mass of the public domain, was not within such disposing power of Congress, and therefore no right to select it passed under the grant.

14. That in any view of this case Matthiessen and Ward are entitled under section 2337 of the Revised Statutes to so much of said land as a mill site as embraces in the five acres their mill and other improvements.

15. That they have already taken the necessary measures under said section 2337 to perfect their title to so much land as that section authorizes as a mill site, and that the application therefor is now pending in the General Land Office on appeal from the decision of the local officers at Eureka, Nevada, rejecting the same because of the application of the State of Nevada to select said land.

I.

Our clients are entitled to be heard in opposition to the approval of this State selection.

248 It is clear beyond question or controversy that since July, 1879, they have been in the open, notorious, and visible possession of this land in good faith under a deed from John T. Wil-

liams for a full and valuable consideration. That deed was valid between the parties (Lamb *vs.* Davenport, 18 Wallace, 307), and therefore, until it was set aside or other parties had acquired superior rights, the possession was lawful against the world. Being, therefore, in lawful possession during the lifetime of Williams' entry, they were, upon the relinquishment of that entry, possessed of superior rights and equities entitling them to obtain title direct from the United States.

Having good reason to distrust Williams, and believing that he would take measures unknown to them to defraud them, they, through their duly constituted agent, applied to the local office for such information as would enable them to protect themselves.

What was the result?

On July 25, 1882, the agent, knowing nothing whatever of any action had by Williams, inquired if "any change" had taken place in the entry "since the 15th of last May, when I last called on you."

249 The register, under date of August 3, 1882, replied: "Mr. Williams informed me that he would try and procure the cancellation of his desert-land entry. We have received no notice as yet of the cancellation of said entry."

We maintain that in his said answer of August 3 the register not only violated his duty, but went further and misled said agent and suppressed the truth respecting the status of the case and Williams' entry.

1. He violated his duty. He knew (a matter which we stand ready to prove) that our clients had reason to distrust Williams and were endeavoring to get a standing on the record in the event of his entry being relinquished, and to apply for the land. He therefore failed to "give proper facilities and information," and thus violated his express duty. Clause 35, inst. of June 17, 1875, Copp's Public Land Laws, 193.

2. His answer was misleading. It conveyed the irresistible impression that the procuring of the cancellation of Williams' entry was a matter resting solely upon efforts thereafter to be taken by Williams.

3. He suppressed the truth. The register knew that the material fact which our clients were seeking to obtain information of

250 was whether or not Williams had made and filed his relinquishment, and when the register omitted, in his answer of August 3, 1882, to state that the relinquishment had been filed in his office on June 9, 1882, he not only misled them into supposing that no relinquishment had been filed, but suppressed the truth in not saying that such paper had been filed. If, as was the fact, the relinquishment had then been forwarded to the General Land Office, what further could Williams do "to try and procure the cancellation of his desert-land entry?" It was then beyond his control, and the register knew that the entry would be cancelled in due course of business. We insist that by taking the measures, the precautions, which they did to secure this land directly from the United States in the event of the relinquishment of Williams' entry our

clients did all that lay within their power to do, and that their lawful right, sustained as it is by their great equities, is not to be defeated by any attempted selection by the State of Nevada.

In Lytle *vs.*The State of Arkansas, 9 Howard, 333, it is held that "it is a well-established principle that when an individual in the prosecution of a right does everything which the law requires
251 him to do and fails to attain his right by the misconduct or neglect of a public officer, the law will protect him."

This principle is universally recognized in the administration of the land laws, and we maintain that the vigilance of our clients in endeavoring to do every possible thing to secure information from the register at Eureka which would enable them to get their claim upon record immediately upon that record being cleared of the Williams' entry brings their case clearly within the principle, if not letter, of the ruling in Lytle *vs.* Arkansas.

II.

The act of June 16, 1880 (21 Stat., 287), being a public grant to the State of the right to select "unappropriated non-mineral land," must be construed strictly—

a. So as to protect the rights of parties claiming or who may claim under any law of the United States.

b. As to the character and condition of the land.

c. In keeping with the canon that a thing not within the intention of the law makes it not within the statute, even though within its letter. The right of selection is limited to "unappropriated" lands. As the statute imposes no qualification upon the ap-
252 propriation which will defeat selection, any appropriation (or its equivalent term, occupation) at the date of selection which may become the basis of a claim and under any law of the United States be capable of ripening into title is sufficient. If it be contended that this appropriation must have been lawful we reply the statute makes no such provision, and in the language of Mr. Justice Davis, in Newhall *vs.* Sanger, 92 U. S., 765, "there is no authority to import a word into a statute in order to change its meaning."

The pre-emption law, the favorite scheme of Congress for the disposal of the public domain, prohibits the exercise of the right of pre-emption upon "lands actually settled and occupied for the purposes of trade and business and not for agriculture," and yet there is no statute authorizing the entry of the public lands for "trade and business."

Is the grant to Nevada, under which the United States gives away her land as a gratuity, to be so literally construed as to permit the State to do that which the Government denies to the pre-emptor? Would the office sustain a pre-emption filing for the land embracing the improvements, mill, &c., which we have upon this
253 land, worth over $60,000 and in constant use for "trade and business?" Certainly not; neither a homestead entry, for section 2289 of the Revised Statutes limits homestead entries to land subject to pre-emption.

If, as is held in Atherton *vs.* Fowler, 96 U. S., 513, forcible intru-

sion upon land in the possession of one who has already settled upon, improved, and enclosed the tract, even though such intrusion be made "under pretense of pre-empting the land, is but a naked, unlawful trespass, and cannot initiate a right of pre-emption," it is equally clear that the selection by the State of Nevada of land in our clients' possession and appropriated to the purposes of trade and business can give her no claim thereto nor defeat their right to secure the title.

The act of April 5, 1882, makes the scrip of which it authorizes the issue applicable to any "unoccupied and unappropriated public lands of the United States not mineral."

In Valentine *vs.* City of Chicago, 6 Copp L. O., 22, Mr. Secretary Schurz held that the scrip (Valentine) can only be located upon unoccupied and unappropriated public lands of the United States in a state of nature; and on January 31, 1883, in the case of
254 Chandler *vs.* The Village of Sault Ste. Marie, Mr. Secretary Teller affirmed that ruling and applied it to Porterfield scrip.

It is clear, therefore, that the right of the State to select lands must be exercised only as to such as are at the date of selection absolutely free from any occupation or appropriation which under any law of the United States for the disposal of her public lands is or may become the predicate of title.

III.

Our clients' possession and occupation of this land at the date of selection by the State was absolutely lawful and valid.

1. Their repeated and persistent efforts to secure information from the land office at Eureka upon which they could act immediately in the event of the relinquishment and cancellation of Williams' entry was notice to that office that they intended to claim the land under the laws of the United States.

2. Being in possession on August 12, 1882, when the desert-land entry of Williams was canceled, such cancellation rendered the land subject to the legal claim of our clients; which said claim attached *eo instanti* upon such cancellation.

3. Their possession is valid and conclusive under section
255–265 2337 of the Revised Statutes, and the very character of the improvements on the land is conclusive evidence of their right under that section to receive a patent for at least the mill site.

That possession having been lawful, so far as Williams was concerned, became lawful, so far as the United States is concerned, on August 12, 1882, when his entry was cancelled, and has since remained lawful. Such possession was in law an appropriation of the land and defeated any claim which the State might make to select it.

The only condition imposed by said section 2337 is that the granting of the mill-site patent shall be "subject to the same preliminary requirements as to survey and notice as are applicable to veins or lodes." Throughout the entire length and breadth of the statute not one word is said as to the time when the application for a mill-site patent is to be made. The chapter (title XXXII, chapter 6) speaks of adverse claimants in lode and placer locations, but that means

adverse claimants under the mineral law. It certainly cannot be contended that the State of Nevada can be an adverse claimant within the meaning of that chapter. The Department has ruled over and over again that railroad companies claiming lands
266 under a grant from Congress are not adverse claimants within the meaning of the agricultural laws.

4. Our clients have fully complied with the law respecting mill-site locations and are entitled to a patent. That application, which is complete in all particulars, is now pending in your office on appeal from the action of the register and receiver at Eureka, Nevada, rejecting the same on account of this State selection; it shows continuous possession of the land since April, 1879; that their improvements consist of a stamp mill, which cost some $67,000 to erect, together with the exclusive right to use all the water needed to supply said mill, &c., &c.

The fact that, through special advantages extended to him, the attorney of Williams, who held the State application to select, was enabled to place it upon record before the mill-site application of our clients was formally presented cannot defeat their ultimate rights.

If it be suggested that the Department is without authority to inquire into the transactions between the State of Nevada and Williams, we reply that the Department is bound by every principle of justice to protect those who invoke the laws of the United
267 States for the preservation of rights flowing out of the use and occupation of the public lands, and that it will not, in a case so clear as this is, lend its aid in support of a scheme devised, as this State selection is, first, to condone the bad faith of Williams towards the Government in failing to do that which when he made his desert-land entry he undertook to do; and, secondly, to take advantage of his own fraud and wrong to the detriment of parties seeking, as our clients do, to obtain title in a lawful manner for the protection of their absolute rights.

In Critchfield *vs.* Lewis, Copp L. O., January, 1883, the honorable Secretary of the Interior held that in order to test the *bona fides* of a pre-emptor it was competent for him to go behind a decree of divorce and inquire whether the suit in which the decree was rendered was fraudulently and collusively begun and conducted in order to qualify the wife as a pre-emptor, and, having so ascertained, rejected her claim. In this case, even were the possession of our clients and their claim consequent thereupon not superior in law to the right of the State of Nevada to select the land, there is every reason in justice and equity for an inquiry by your office into the allegations
268 which we make in order that the rights and valuable improvements of our clients may not be swept away and permitted to inure to the benefit of a party, and that as a gratuity on the part of the United States, who has not only been guilty of breach of good faith towards his grantees, but has in this covert manner attempted to practice a fraud upon them, and this, too, when the fact of their occupation and possession of this land and the existence and value of their improvements was known to the authorities of

the State and to the local officers at the time the selection was attempted.

IV.

No portion of the land embraced by the desert-land entry of Williams made May 19, 1879, and canceled August 12, 1882, is subject to selection by the State under the act of June 16, 1880.

The language of the granting clause of the act of June 16, 1880 (21 Stat., 287), is: "Be it enacted, &c., That there be, and are hereby, granted to the State of Nevada two million acres of land in said State in lieu of the sixteenth and thirty-sixth sections of land heretofore granted to the State of Nevada by the United States." It therefore was a grant *in præsenti* of two million acres of land
269 over which the Congress had at the date of the act the absolute power of disposal.

In Rutherford *vs.* Greene's Heirs, 2 Wheaton, 196, the language of the grant under consideration was: "Be it enacted, That 25,000 acres of land shall be allotted for and given to Major General Nathaniel Greene." Mr. Chief Justice Marshall, after declaring that "the words are words of absolute donation," says: "It is clearly and unanimously the opinion of this court that the act of 1782 vested a title in General Greene to 25,000 acres of land to be laid off within the boundaries allotted."

The sixth section of the act of March 6, 1820, admitting Missouri into the Union, enacts "that four entire sections of land be, and the same are hereby, granted to the State, * * * which said sections shall * * * be located * * * on any public lands of the United States. * * *"

In Lessieur *vs.* Price, 12 Howard, 59, the court said: The land was granted by the act of 1820; it was a present grant, wanting identity to make it perfect, and the Legislature was vested with full power to select and locate the land, and we need only here say what was substantially said by this court in the case of Rutherford *vs.* Greene's Heirs, 2 Wheat., 196, that the act of 1820 vested a title in the State of Missouri of four sections, and that the selec-
270 tion * * * gave precision to the title and attached it to the land selected.

In Schulenberg *vs.* Harriman, 21 Wallace, 44, the court, being called upon to construe the words "that there be, and is hereby, granted" in the first section of the act of Congress approved June 3, 1856 (11 Stat., 20), and the same words in the first section of the act of May 5, 1864 (13 Stat., 66), declares them to be words of present grant, and says: "Unless there are other clauses in the statute restraining the operation of words of present grant these must be taken in their natural sense to import an immediate transfer of title, although subsequent proceedings may be required to give precision to that title and attach it to particular tracts." In Leavenworth, etc., Railroad Company *vs.* United States, 92 U. S., 733, the court holds that "the words 'there be, and is hereby, granted' are words of absolute donation and import a grant *in præsenti*," and that such a grant is applicable only to public land owned absolutely by the United States.

Again, in Missouri, etc., Railroad Co. *vs.* Kansas Pacific Railroad Co., 97 U. S., 491, it is held that the same words import a grant *in præsenti* and not one in future or the promise of a grant.

In Railroad Company *vs.* Baldwin, 103 U. S., 426, was involved the construction of the sixth section of the act of July 23,
271 1866, which enacts "that the right of way through the public lands be, and the same is hereby, granted" to the Saint Joseph and Denver City Railroad Company "to the extent of one hundred feet in width on each side of said road where it may pass through the public domain." When the act was passed the land claimed by Baldwin was vacant, unoccupied land of the United States, and the line of the road was not definitely located over it until October, 1871. Baldwin acquired whatever rights he possessed in October, 1869. The court held that the grant of the right of way "is a present absolute grant," and that as Baldwin acquired the land subsequently to the date of the act he took it subject to the right of way of the company.

See also Wood *vs.* Railroad Company, 104 U. S., 309; Taboreck *vs.* B. & M. R. R. Co., 13 Federal Reporter, 103.

The latest adjudication on the subject is Van Wyck *vs.* Knevals, Supreme Court of the United States, October term, 1882, where the court reaffirms its former rulings touching such words of grant. In all the acts of Congress granting swamp and overflowed lands to the States the grants have been held to be *in præsenti* and to carry all lands of that description at the date of the grant.

Railroad Company *vs.* Freemont County, 9 Wall., 89.
272 Railroad Company *vs.* Smith, *id.*, 95.
French *vs.* Fyan, 93 U. S., 169.

See also the following decisions of the State courts:
Clarkson *vs.* Buchanan, 53 Mo., 563.
Campbell *vs.* Wortman, 58 *id.*, 258.
Daniel *vs.* Pervis, 50 Miss., 261.
Supervisors *vs.* State Attorney, 31 Ill., 68.
Gaston *vs.* Stall, 5 Oregon, 48.
Bush *vs.* Donohue, 31 Mich., 481.

The same doctrine is uniformly held touching the grants of school lands.

V.

The act of June 16, 1880, is in no sense an indemnity grant.

The statute is in plain and unambiguous language, a grant in quantity of 2,000,000 acres of the unappropriated non-mineral public lands of which Congress at the time of its passage had the power to dispose by reason of their being then "public lands." Throughout the entire legislation of Congress indemnity land has been provided for or allowed only where grants of quantity have become inoperative or ineffectual by reason of the prior appropriation of particular tracts which otherwise would have passed under the grant.

The term signifies compensation for loss & remuneration.
273 No loss had accrued to Nevada, and the act of 1880 merely substitutes for sections 16 and 36 the 2,000,000 acres which it grants.

The fact that selection is to be made does not change the status of the grant or affect the title to be acquired under the act, for it has been uniformly held that such selection is necessary merely for the purpose of giving the grant precision and of attaching it to particular tracts, and that when made the title of the grantee attaches by relation as of the date of the grant. In other words, that no land passes under a grant *in præsenti* except such as by reason of the full title being in the United States at the date of the act Congress had power to grant. It being clear, therefore, upon the most ample authority, that the act of June 16, 1880, was a grant *in præsenti* and could confer upon the State of Nevada no authority to select lands to which the United States did not at that date hold the full title, it is equally clear that as this land, which was at that date embraced in Williams' desert-land entry made May 19, 1879, and which said entry was not canceled until August 12, 1882, more than two years after the passage of the act, was excepted from the grant, and
274 the attempted selection by the State was illegal.

"If the grant is a present one and the title does not vest when the grant takes effect, it cannot vest afterwards." Decision of Mr. Secretary Teller in Graham *vs.* Hastings and Dakota Railroad Co., 9 Copp's Land Owner, p. 237.

We earnestly insist that in any aspect of the case the claim of the State of Nevada to select this land is unlawful, and that the claim of our clients to it is paramount, not only by reason of their possessory rights under the mineral laws, but by reason of their efforts to put that claim on record.

Respectfully submitted.

CURTIS & BURDETT,
Attorneys for Franz O. Matthiessen and Lebbeus B. Ward.

EXHIBIT "A."

"HOT CREEK, NYE COUNTY, NEVADA, 11 *April*, 1882.

F. H. Hinckley, Esq.

DEAR SIR: In mine to you of the 30th March I asked you to let me know if in case J. T. Williams should let the 19th May, 1882, pass without perfecting his title to the 'desert-land entry,' and also if the 2nd of December, 1882, pass without his perfecting the
275 title to the homestead entry, would the desert-land entry be on the market again the next day, 20 May, 1882, or would Williams have more time given him, and also would the homestead entry be in the market on the third of December, 1882.

Be so kind as to give me your views on the above two questions, and oblige,

Yours truly, R. GLUYAS.

P. S.—I guess you overlooked the questions in my letter, and I overlooked that you did not notice the questions when I received your answer to mine of March 30th, 1882. R. G."

EXHIBIT "B."

"HOT CREEK, NYE COUNTY, NEVADA, 25 *July*, 1882.

F. H. Hinckley, Esq., register U. S. land office, Eureka.

MY DEAR SIR: Again I take the liberty to ask you is there any change in the J. T. Williams entries, either homestead or desert land, or J. D. Ernst or W. F. Ernst entries since the 15th of last May, when I last called on you; if there is any change please let
276 me know what it is, and I would thank you for a line in reply to this, anyway, so as to be certain this reaches you, as our mail is not in a very good condition at present.

Very truly yours, R. GLUYAS."

EXHIBIT "C."

"UNITED STATES LAND OFFICE,
EUREKA, NEVADA, *August 3rd*, 1882.

Mr. R. Gluyas, Hot Creek, Nevada.

SIR: Your note in relation to the Williams and Ernst entries is at hand. There is no change in relation to Williams' homestead entry.

Mr. Williams informed me that he would try and procure the cancellation of his desert-land entry. We have received no notice as yet of the cancellation of said entry. John D. Ernst has submitted proof to the Department as to the mineral character and non-mineral character of the land adjacent to his pre-emption claim. W. F. Ernst claim has been patented.

Very respectfully, F. H. HINCKLEY, *Register*."

277 Endorsed: General Land Office, April 5, 1883. 31272. Curtis & Burdett, city. Ap'l 4, '83. Submit protest and argument against approval of certain selection by State of Nevada, etc. Referred to div. N Ap'l 6, '83. Homer. Nov. 19, '83, ref'd to div. G. D. E. F. C. A. B. 4 Porter, 31–161. Washington, D. C., April 4th, 1883. Service of the within by copy is hereby acknowledged. E. C. Ford, att'y for claimant under State. Plaintiff's Exhibit C. John B. Thompson, special examiner. Filed Nov. 1, 1886. T. J. Edwards, clerk.

278 PLAINTIFF'S EXHIBIT D.

UNITED STATES LAND OFFICE,
EUREKA, NEVADA, *January 10th*, 1883.

Hon. Com'r G. L. O., Washington, D. C.

SIR: On the 8th instant an application for a patent for the New Philadelphia mill site, situated in Hot Creek mining district, Nye

county, Nevada, was presented at this office by R. Gluyas, attorney-in-fact for Franz O. Matthiessen and Lebbeus B. Ward, and the same was rejected by this office for the reason that the tract applied for is embraced in the E. ½ of S. E. ¼ of section 33 and W. ½ of S. W. ¼ of section 34, township 8 north, of range 50 east, selected by the State of Nevada in list No. 24, filed September 2d, 1882. This tract was formerly a part of desert-land entry No. 158, made by Joseph T. Williams on the 19th day of May, 1879. Said entry was relinquished by Williams, and the relinquishment thereof was filed in this office on the 9th of June, 1882, and forwarded to your office with my letter of that date.

On the 12th of August, 1882, we noted the cancellation of
279 said desert-land entry upon our records, as directed in your letter "C" of August 4th, 1882. At the time that we rejected said application for patent for the New Philadelphia mill site we notified Mr. Gluyas of our action and of our reasons for so doing, and he thereupon appealed in behalf of Messrs. Matthiessen and Ward from our ruling.

The following is a list of the papers presented, which I herewith transmit:

1st. Application for patent, with rejection and appeal written upon the back thereof.

2d. Proof of posting plat & notice upon claim.

3d. Plat and field-notes.

4th. Abstract of title.

5th. Non-mineral affidavits.

6th. Notice for publication.

7th. Agreement of publisher.

8th. Affidavit of Messrs. Wren and Cheney as to the papers filed in land office, etc.

At the time Mr. Gluyas presented said application for patent he also tendered the sum of ten dollars as fees for filing the same, which we refused.

280 Very respectfully, F. H. HINCKLEY, *Register.*

Endorsed: By direction of the Commissioner this case must be considered in connection with State selection of the same land list in pre-emption division. J. T. Feb. 24, '83. New Phila. silver mine. State selection, Eureka, Nev. M'ch 9, '83, on motion of Mr. Curtis, & Mr. Ford not objecting, the Com'r directs that action in this case may be delayed for some time. J. T. 5870. Rec'd Jan. 18, 1883. U. S. land office, Eureka, Nevada, January 10th, 1883. Register transmits papers in the rejected application for patent for New Philadelphia mill site, presented by Richard Gluyas, att'y-in-fact for Matthiessen and Ward. F. H. Hinckley, register. To E. C. Ford, Sept. 4, '83. D. E. F. To Curtis & Burdette, Sept. 4, '83. D. E. F. To Curtis & Burdett, Oct. 18, '83. D. E. F. To E. C. Ford, Oct. 18, '83. D. E. F. Ref'd to Div. G Nov. 19, '83. D. E. F. C. N. B. Plaintiff's Exhibit D. John B. Thompson, special examiner. Filed Nov. 1, 1886. T. J. Edwards, clerk.

281 ENCLOSURE 1 OF PL'FF'S EX. D.

(1.) (Copy.)

Application for Patent.

STATE OF NEVADA, } ss:
County of Eureka, }

Application for patent for the New Philadelphia mill and mill-site mining claim.

To the register and receiver of the U. S. land office at Eureka, Nevada:

RICHARD GLUYAS, being duly sworn according to law, deposes and says that he is the attorney-in-fact of F. O. Matthiessen & L. B. Ward; that in virtue of a compliance with the mining rules, regulations, and customs by the said Franz O. Matthiessen and his co-claimant, Lebbeus B. Ward, applicants for patent herein, — have become the owners of and are in the actual, quiet, and undisturbed possession of the New Philadelphia mill site, with surface ground 660 feet in length by 330 feet in width for the convenient working thereof, as allowed by local rules and customs of miners, said mill-site claim and surface ground being situated in the Hot Creek mining district, county of Nye, State of Nevada, and being more particularly set forth and described in the official field-notes of survey thereof, hereto attached, dated the 26th day of December, A. D. 1882, and in the official plat of said survey, now posted conspicuously on said mill-site claim or premises, a copy of which is filed herewith. Deponent further states that the facts relative to the right of possession of the said claimants hereinbefore named to said mill-site claim and surface ground so

282 surveyed and platted are substantially as follows, to wit: That on July 26th, 1879, J. T. Williams conveyed by deed his right, title, and interest to the E. ½ of S. E. ¼ of sec. 33 to the New Philadelphia Silver Mining Co.; that said sec. 33 is in township 8 N., R. 50 E., M. D. M.; that on or about August 5th, 1879, J. E. Clayton, sup't *of* for the said N. P. S. M'g Co., took possession of said mill-site claim, laid off a mill grade, and employed deponent to superintend the erection of a mill. A mill was erected on said mill-site claim at a total cost of not less than (67,000) sixty-seven thousand dollars; that in July, 1881, the sheriff of Nye county, Nevada, sold said mill-site claim, with the mill thereon, to one of said claimants, viz., Lebbeus B. Ward, and that on the second day of December, 1882, Lebbeus B. Ward did by deed convey to Franz O. Matthiessen, the other of said claimants, an undivided one-half of said mill-site claim and mill thereon; that deponent has had, either as agent for said Franz O. Matthiessen and Lebbeus B. Ward or their grantors, continual possession and charge of said mill-site claim from about August 11th, 1879, to the present time—

Which will more fully appear by reference to records of Nye

county, Nevada, and the abstract of title hereto attached and made a part of this affidavit, the value of the labor done and improvements made upon said mill-site claim by claimants and their grantors being equal to the sum of sixty-seven thousand dollars in gold coin of the United States.

283 In consideration of which facts and in conformity with the provisions of the act of Congress approved May 10th, 1872, entitled "An act to promote the development of the mining resources of the United States," application is hereby made for and in behalf of said Franz O. Matthiessen and Lebbeus B. Ward for a patent from the Government of the United States for the said New Philadelphia mill-site claim and the surface ground so officially surveyed and platted.

RICHARD GLUYAS,
Attorney for Claimants.

Subscribed and sworn to before me this 8th day of January, A. D. 1883; and I hereby certify that I consider the above deponent a credible and reliable person, and that the foregoing affidavit, to which was attached the field-notes of survey of the New Philadelphia mill-site claim, was read and examined by him before his signature was affixed thereto and the oath made by him.

F. H. HINCKLEY, *Register.* [SEAL.]

This application was presented by R. Gluyas Jan. 8th, 1883, and rejected by us for the reason that the land herein applied for is embraced in a selection made by the State of Nevada in list No. 24, filed in this office Sept. 2nd, 1882.

(Signed) F. H. HINCKLEY, *Register.*
H. CARPENTER, *Receiver.*

284 We hereby appeal from the decision of the register and receiver of the land office at Eureka, State of Nevada, refusing to receive, allow, and file the within application for a patent to the mill site therein described and rejecting the same.

To the Commissioner of the General Land office, at Washington.

Eureka, January 8th, 1883.

FRANZ O. MATTHIESSEN,
LEBBEUS B. WARD,
By RICHARD GLUYAS,
Their Attorney.

Endorsed: Enclosure 1 of "Plaintiff's Exhibit D." Filed Nov. 1, 1886. T. J. Edwards, clerk.

285 ENCLOSURE 4 OF PL'FF'S EX. D.

(2.) (Copy.)

Abstract of Title, New Philadelphia Mill and Mill Site.

Deed.

Jos. T. Williams
to
New Philadelphia Silver M'g Co. } Dated July 26, A. D. 1879.
Consideration, $5,000.

Grants, bargains, sells, remises, releases, conveys, and quitclaims all the right, title, interest, estate, claim, and demand in and to that certain lot, piece, or parcel of land, containing eighty acres, situated in Hot Creek, Nye county, Nevada, described as follows, viz: Being the E. ½ of S. E. ¼ of section 33, township 8 N., range 50 E., Mt. Diablo meridian, together with the exclusive right to use all the water needed to supply such mills and other metallurgical works or for domestic, smelting, milling, mining, or other uses as a milling and mining company, said water to be taken from the streams and springs upon the ranch or lands known as the Hot Creek ranch and springs and to be conveyed in pipes to said premises.

The party of the first part binds himself, his heirs, executors, &c., not to give or sell to any other party the right to use any of said water, excepting such water as J. W. Merritt may need for a ten-stamp mill, to be used only for the reduction of ores from his own mines, provided that said Merritt erects said mill before January 1st, 1880.

286 And the party of the first part agrees to and with the party of the second part that he has full right and power to sell and convey the said premises and water rights, and that they are now free from all incumbrances, sales, or mortgages.

JOSEPH T. WILLIAMS. [SEAL.]

Acknowledged July 26th, 1879, before C. G. Hubbard, a notary public.

Recorded July 29th, 1879, in Book J of Deeds, at pp. 534 and 535.

GEORGE ERNST,
Co. Recorder.

287 *Deed.*

New Philadelphia S. M. Co.
to
Henry B. Stanton, Receiver. } April 15, A. D. 1881.
Consideration, $1.00.

And, in compliance with order of the supreme court of the State of New York August 3rd, 1880, grants, bargains, sells, remises, releases, and forever quitclaims all right, title, and interest of the party of the first part in and to all property or claims now owned or that may be hereafter acquired by it as follows, to wit:

All that certain piece or parcel of land, containing eighty acres, situated in Hot Creek, Nye county, Nevada, and more particularly described by deed from Joseph T. Williams, dated July 26th, 1879, and recorded in Book J of Deeds, pages 534 and 535, and all other property belonging to the said party of the first part.

[Seal New Philadelphia Silver Mining Co., New York.]

THE NEW PHILADELPHIA SILVER MINING CO.,
By GEORGE D. HYDE.
288 GEORGE D. HYDE, *President.*
NICHOLAS E. PAINE,
Vice-President New Phila. Co.
WILLIAM G. SMITH, *Treasurer.*
ALFRED KIMBER, *Secretary.*

Acknowledged April 16th, A. D. 1881, before Charles Nettleton, a commissioner of Nevada for New York, by George D. Hyde, president; Nicholas E. Paine, vice-president; Wm. G. Smith, treasurer; Alfred Kimber, secretary, New Philadelphia Silver Mining Company.

Recorded May 5th, 1881, Book K, at pp. 474 to 483, inclusive.
M. R. DELANO, *Co. Recorder.*

289 *Sheriff's Certificate of Sale under Execution.*

D. O'Neil, Sheriff, to Lebbeus B. Ward. } Dated July 12th, A. D. 1881. Consideration, $5,137.19.

Sells at public auction that certain parcel of land, containing eighty acres, being the same premises conveyed to the New Philadelphia Silver Mining Company by Joseph T. Williams by deed dated July 26th, A. D. 1879, and recorded in Book J of Deeds, at pp. 534 and 535, records of Nye county, Nevada, together with other property.

DAVID O'NEIL,
Sheriff Nye Co., Nevada,
By W. S. BRYDEN,
Deputy Sheriff.

Filed July 13th, A. D. 1881, by—

M. R. DELANO,
Co. Recorder.

290 *Deed on Execution.*

New Philadelphia Silver Mining Co., by David O'Neil, Sheriff, to Lebbeus B. Ward. } Dated August 22d, A. D. 1881. Consideration, $2,863.50.

By virtue of an execution and in pursuance of the statutes in such cases made and provided, grants, bargains, sells, conveys, and

confirms all right, title, interest of the said party of the first part which they had on the 7th day of July, A. D. 1881, or at any time afterwards in and to the following-described premises:

One ten-stamp quartz mill and mill site, situated at Hot Creek, Nye county, Nevada, and known as the New Philadelphia mill and mill site, and other property.

DAVID O'NEIL, *Sheriff.* [SEAL.]

Acknowledged August 23rd, 1881, before—
GEORGE NICHOLL,
County Clerk.

Recorded Aug 23rd, 1881, in Book K, at pages 561 to 563, inclusive.

M. R. DELANO,
Co. Recorder.

291 *Deed.*

Henry B. Stanton, Receiver, to Franz O. Matthieson and Lebbeus B. Ward. } Dated September 16th, A. D. 1881. Consideration, $5,000.00.

Grants, bargains, sells, and conveys all of the right, title, and interest of the said party of the first part in and to all that certain lot, piece, and parcel of land, containing 80 acres, with building, structures, and improvements erected thereon, including one ten-stamp quartz mill, with appurtenances, and more particularly described as follows, viz: The E. ½ of S. E. quarter of section 33, township 8 north, range 50 E., Mt. Diablo mer., together with all water rights and rights conveyed by deed from Joseph T. Williams to the New Philadelphia Silver Mining Company, dated July 26th, A. D. 1879, and recorded in the office of recorder of Nye county, Nevada, in Book J of Deeds, at pp. 534 and 535, on July 29th, 1879, and other property.

(Signed) HENRY B. STANTON,
As Receiver New Philadelphia Silver Mining Co.

Acknowledged October 29th, 1881, before—
CHARLES NETTLETON,
Commissioner for Nevada in New York.

Recorded November 14th, 1881, in Book "K" of Deeds at pp. 608 to 629.

M. R. DELANO,
Co. Recorder.

292 *Deed.*

Lebbeus B. Ward to Franz O. Matthiessen. } December 2d, A. D. 1882. Consideration, $1.00.

Grants, bargains, sells, aliens, remises, releases, conveys, and con-

firms all the undivided half interest of, in, and to the following-described premises, viz:

First. One ten-stamp quartz mill and mill site, situated at Hot Creek, Nye county, State of Nevada, and known as the New Philadelphia Silver Mining Company's mill and mill site, and other property.

LEBBEUS B. WARD. [SEAL.]

Acknowledged December 2nd, A. D. 1882, before—
RICHARD M. BRUNO,
A Commissioner of Nevada in New York.

Recorded December 13th, 1882, in Book L of Deeds, at pages 117 to 123, inclusive.

M. R. DELANO,
Co. Recorder.

293 *Special Power of Attorney.*

Franz O. Matthiessen and Lebbeus B. Ward to Richard Gluyas. } Dated December 2nd, A. D. 1882.

Whereas said parties of the first part are in possession of the following-described land, to wit, the east half of the southeast quarter of section thirty-three, township eight north, range fifty east, Mt. Diablo meridian, situated at Hot Creek, Nye county, State of Nevada, on which premises have been erected a quartz mill and reduction works; and whereas the said parties of the first part desire to apply for a five-acre mill site, embracing such portion of the above-described premises as will include said quartz mill and reduction works:

The said parties of the first part do make, constitute, and appoint said Richard Gluyas their true and lawful attorney in their name, place, and stead to apply for said mill site as their attorney under section 2337 of the Revised Statutes of the United States or under such other sections as may be necessary or proper to secure the said parties a five-acre mill site, including said quartz mill and reduction works, with full power to appeal from the decisions (in their name) of the register or receiver of the district land office at Eureka, Nevada, giving and granting unto the said Richard Gluyas
294 full power and authority to do and perform every act and thing whatsoever necessary, &c., hereby ratifying and confirming, &c.

(Signed) F. O. MATTHIESSEN. [SEAL.]
LEBBEUS B. WARD. [SEAL.]

Acknowledged December 2nd, 1882, before Richard M. Bruno, a commissioner for Nevada in New York.

Recorded December 13th, 1882, in Book B of Powers of Attorney, at pp. 304 and 305.

M. R. DELANO,
County Recorder.

STATE OF NEVADA, } ss:
County of Nye, }

I, M. R. Delano, recorder in and for said county, do hereby certify the foregoing to be full, true, and correct abstracts of the instruments therein set forth; and, further, that there are no instruments in writing or on file in my office affecting the title to the same except as herein set forth.

In witness whereof I have hereunto set my hand and affixed my official seal, at my office, this 3rd day of January, A. D. 1883.

M. R. DELANO,

[SEAL.] *Co. Recorder, Nye County, Nevada.*

Endorsed: Abstract of title. Enclosure 4 of "Plaintiff's Exhibit D." Filed Nov. 1, 1886. T. J. Edwards, clerk.

295 (3.) (Copy.)

Field-notes of U. S. survey No. 37, T. 8 N., R. 50 E., M. D. M., located on surveyed land claimed by Franz O. Matthiessen and Lebbeus B. Ward, on the New Philadelphia mill site, situated in Hot Creek mining district, Nye county, Nevada.

Beginning at a post marked "No. 1, U. S. survey No. 37," whence the southeast corner of section 33, township 8 north, range 50 east, M. D. M., bears S. 31° E. 693 feet, and the southwest corner of the New Philadelphia mill bears N. 29° 50 E. 159½ feet, and running thence, 1st course, N. 63¾° E. 660 feet to post marked No. 2, U. S. survey No. 37; thence, 2nd course, N. 26¼° W. 330 feet to post marked No. 3, U. S. survey No. 37; thence, 3rd course, S. 63¾° W. 660 feet to post marked No. 4, U. S. survey No. 37; thence, 4th course, S. 26¼° E. 330 feet to the place of beginning, containing five acres.

No location corners found.

Courses expressed from the true meridian with a magnetic variation of 16½° east.

With the identity of the premises I am personally acquainted; and I hereby certify that the improvements consist of a steam quartz mill, upon which the applicants or their grantors have expended a sum far exceeding five hundred dollars.

296 I certify that the foregoing transcript of the field-notes of the survey of Franz O. Matthiessen and Lebbeus B. Ward mill-site claim, situated in Hot Creek mining district, county of Nye, and State of Nevada, has been correctly copied from the original notes of said survey on file in this office; that said field-notes furnish such an accurate description of said mill-site claim as will, if incorporated into a patent, serve fully to identify the premises, and that such reference is made therein to natural objects and permanent monuments as will perpetuate and fix the *locus* thereof.

I further certify that the value of the labor and improvements upon the said mill-site claim placed there by the claimant and his grantors is not less than five hundred dollars, and that said improvements consist of a steam quartz mill.

I further certify that the plat thereof, filed in the U. S. land office at Eureka, is correct and in conformity with the foregoing field-notes.

U. S. surveyor general's office, Reno, Nevada, 26th day of December, 1882.

(Signed) E. S. DAVIS,
U. S. Surveyor General for Nevada.

Endorsed: Field-notes of U. S. survey No. 37, T. 8 N., R. 50 E., M. D. M., claimed by F. O. Matheissen *et al.*, New Philadelphia mill site, Hot Creek mining district, Nye county, Nevada. Surveyed by George Ernst, deputy mineral surveyor; date, December 16, '82.

297 ENCLOSURE 5 OF PL'FF'S EX. D.

(4.) (Copy.)

Non-Mineral Affidavit.

COUNTY OF EUREKA, } ss:
State of Nevada, }

RICHARD GLUYAS, being duly sworn according to law, deposes and says that he is the identical person who is an applicant for Government title to the New Philadelphia mill site, in Hot Creek mining district, Nye county, Nevada, and designated as lot No. 37; that he is well acquainted with the character of said described land and with each and every legal subdivision thereof, having frequently passed over the same; that his knowledge of said land is such as to enable him to testify understandingly with regard thereto; that there is not, to his knowledge, within the limits thereof any vein or lode of quartz or other rock in place bearing gold, silver, cinnabar, lead, tin, or copper or any deposit of coal; that there is not within the limits of said land, to his knowledge, any placer, cement, gravel, or other valuable mineral deposit; that no portion of said land is claimed for mining purposes under the local customs or rules of miners or otherwise; that no portion of said land is worked for mineral during any part of the year by any person or persons; that said land is essentially non-mineral land, and that his application therefor is not made for the purpose of fraudulently obtaining title to mineral land, but with the object of securing said land for milling purposes.

(Signed) RICHARD GLUYAS.

Subscribed and sworn to before me this 8th day of January, A. D. 1883; and I hereby certify that the foregoing affidavit was read to the said Richard Gluyas previous to his name being subscribed
298 thereto, and that deponent is a respectable person, to whose affidavit full faith and credit should be given.

(Signed) F. H. HINCKLEY, *Register.*

299 (5.) (Copy.)

Non-Mineral Affidavit.

STATE OF NEVADA, }
County of Nye, } ss:

KNUD CHRISTIAN HANSEN and JOHN TATTON, of said county and State, being first duly sworn, each for himself deposes and says that he is well acquainted with the New Philadelphia mill and mill-site claim, situated in Hot Creek mining district, county of Nye and State of Nevada, claimed by F. O. Matthiessen and L. B. Ward, applicants for United States patent therefor; that he is well acquainted with the character of said described land and with each and every legal subdivision thereof, having frequently passed over the same; that his knowledge of said land is such as to enable him to testify understandingly with regard thereto; that there is not, to his knowledge, within the limits thereof any vein or lode of quartz or other rock in place bearing gold, silver, cinnabar, lead, tin, or copper or any deposit of coal; that there is not within the limits of said land, in his knowledge, any placer, cement, gravel, or other valuable mineral deposit; that no portion of said land is claimed for mining purposes under the local customs or rules of miners or otherwise; that no portion of said land is worked for minerals during any part of the year by any person or persons; that said land is essentially non-mineral land, and that he has no interest whatever in said mill-site claim.

(Signed) KNUD CHRISTIAN HANSEN.
JOHN TATTON.

300 Subscribed and sworn to before me this second, 2nd, day of January, 1883; and I hereby certify that the foregoing affidavit was read to the said Knud Christian Hansen and John Tatton previous to *his* name- being signed thereto, and that deponent *is a* respectable person-, to whose affidavit full faith and credit should be given.

(Signed) GEORGE TURIN,
[SEAL.] *Notary Public.*

Endorsed: Form P, U. S. mining act, May 10, 1872. Non-mineral affidavit. F. O. Matthiessen and Lebbeus B. Ward, applicant-. Dated January 2, 1883. State of Nevada. Enclosure 5 of "Plaintiff's Exhibit D." Filed Nov. 1, 1886. T. J. Edwards, clerk.

301 ENCLOSURE 2 OF PL'FF'S EX. D.

(6.) (Copy.)

Proof of Posting Notice and Diagram on the Claim.

STATE OF NEVADA, }
County of Nye, } ss:

KNUD C. HANSEN and JOHN TATTON, each for himself and not one

for the other, being first duly sworn according to law, deposes and says that he is a citizen of the United States, over the age of twenty-one years, and was present on the second day of January, A. D. 1883, when a plat representing the New Philadelphia mill site and certified to as correct by the United States surveyor general of Nevada, together with a notice of the intention of Franz O. Matthiessen and Lebbeus B. Ward to apply for a patent for the mill-site claim and premises so platted, was posted on a conspicuous place upon said mill-site claim, to wit, upon the front of the quartz mill, where the same could be easily seen and examined, the notice so conspicuously posted upon said claim being in words and figures as follows, to wit:

Legal notice of the application of F. O. Matthiessen and L. B. Ward for a United States patent.

"Notice is hereby given that in pursuance of the act of Congress approved May 10th, 1872, to promote the development of the mining resources of the United States," Franz O. Matthiessen and Lebbeus B. Ward, claiming 660 linear feet, with surface ground 330 feet in width, lying and being situated within the Hot Creek mining
302 district, county of Nye and State of Nevada, have made application to the United States for a patent for the said mill-site claim, which is more fully described as to metes and bounds by the official plat herewith posted and by the field-notes of survey thereof, now filed in the office of the register of the district of lands subject to sale at Eureka, Nevada, which field-notes of survey describe the boundaries and extent of said claim on the surface, with magnetic variation at 16½° east, as follows, to wit:

Beginning at a post marked No. 1, U. S. survey No. 37, whence the southeast corner of section 33, township 8 north, of range 50 east, Mt. D. M., bears S. 31° E. 693 feet, and the southwest corner of the New Philadelphia mill bears N. 29° 50′ E. 159½ feet, and running thence, 1st course, N. 63¾° E. 660 feet to post marked No. 2, U. S. survey No. 37; thence, 2nd course, N. 26¼° W. 330 feet to post marked No. 3, U. S. survey No. 37; thence, 3rd course, S. 63¾° W. 660 feet to post marked No. 4, U. S. survey No. 37; thence, 4th course, S. 26¼° E. 330 feet to the place of beginning, containing 5 acres; the said claim being in the actual possession of said Franz O. Matthiessen and Lebbeus B. Ward and their grantors constantly since the 5th day of August, 1879, in the county and State aforesaid, the presumed general course or direction of the said mill-site claim being shown upon the plat posted herewith as near as can be determined from present developments, this claim being for 660 linear feet thereof, together with the surface ground shown upon the official plat posted herewith, the said mill-site claim being designated as lot No.
303 37 in the official plat posted herewith.

Any and all persons claiming adversely the mill-site ground, premises, or any portion thereof so described, surveyed, platted, and applied for are hereby notified that unless their adverse claims are duly filed as according to law and the regulations thereunder within sixty days from the date hereof with the register of the United States

land office at Eureka, in the State of Nevada, they will be barred in virtue of the provisions of said statute.

(Signed) RICHARD GLUYAS,
Att'y-in-Fact for Franz O. Matthiessen and Lebbeus B. Ward.

Dated on the ground this second day of January, A. D. 1883.

Witness:
(Signed) KNUD CHRISTIAN HANSEN.
JOHN TATTON.

Subscribed and sworn to before me this 2nd day of January, A. D. 1883; and I hereby certify that I consider the above deponents credible and reliable witnesses, and that the foregoing affidavit and notice were read by each of them before their signatures were affixed thereto and the oath made by them.

GEORGE TURIN,
[SEAL.] *Notary Public.*

Endorsed: Form D, U. S. mining act, May 10, 1872. Proof of posting notice and diagram of claim. Enclosure 2 of "Plaintiff's Exhibit D." Filed Nov. 1, 1886. T. J. Edwards, clerk.

304 ENCLOSURE 6 OF PL'FF'S EX. D.

(7.) (Copy.)

Notice for Publication in a Newspaper.

Application for patent to the New Philadelphia mill site.

No. —.

U. S. GENERAL LAND OFFICE, ——, —.

Notice is hereby given that Franz O. Matthiessen and Lebbeus B. Ward, by their attorney-in-fact, Richard Gluyas, whose post-office address is Hot Creek, Nye county, Nevada, have this day filed their application for a patent for 660 linear feet of the New Philadelphia mill site, with surface ground 330 feet in width, situate, lying, and being in Hot Creek mining district, county of Nye and State of Nevada, and known and designated by the field-notes and official plat on file in this office as lot No. 37, in township 8 north, range 50 east, of Mount Diablo meridian—

The exterior boundaries of said lot No. 37 being as follows, to wit—variation 16½° east:

Commencing at a post marked No. 1, U. S. survey No. 37, whence the southeast corner of sec. 33, T. 8 N., R. 50 E., M. D. M., bears S. 31° E. 693 feet, and the southwest corner of the New Philadelphia mill bears N. 29° 50′ E. 159½ feet, and running thence, 1st course, N. 63¾° E. 660 feet to post marked No. 2, U. S. survey No. 37; thence,
2nd course, N. 26¼° W. 330 feet to post marked No. 3, U. S.
305 survey No. 37; thence, 3rd course, S. 63¾° W. 660 feet to post marked No. 4, U. S. survey No. 37; thence, 4th course, S. 26¼° E. 330 feet to the place of beginning, containing 5 acres.

Any and all persons claiming adversely any portion of said mill site or said ground, as hereinbefore described, are required to file their adverse claim with the register of the United States land office at Eureka, in the State of Nevada, during the sixty days' period of publication hereof or they will be barred by virtue of the provisions of the statute.

—— ——, *Register.*

Endorsed: United States Land Office. Notice for publication in newspaper. Form S. Enclosure 6 of "Plaintiff's Exhibit D." Filed Nov. 1, 1886. T. J. Edwards, clerk.

306 ENCLOSURE 7 OF PL'FF'S EX. D.

(8.) (Copy.)

Agreement of Publisher.

The undersigned, publisher and proprietor of the Belmont Courier, a weekly newspaper published at Belmont, county of Nye and State of Nevada, does hereby agree to publish a notice, dated U. S. land office, required by chapter six of title thirty-two, Revised Statutes of the United States, of the intention of Franz O. Matthiessen and Lebbeus B. Ward to apply for a patent for *his* claim on the New Philadelphia mill-site, situated in Hot Creek mining district, county of Nye, State of Nevada, and to hold the said F. O. Matthiessen *et al.* alone responsible for the amount due for publishing the same; and it is hereby expressly stipulated and agreed that no claim shall be made against the Government of the United States or its officers or agents for such publication.

Witness my hand and seal this 3rd day of January, A. D. 1883.

ANDREW MAUTE.

Witness:
GEORGE ERNST.

Endorsed: Agreement of publisher. Enclosure 7 of "Plaintiff's Exhibit D." Filed Nov. 1, 1886. T. J. Edwards, clerk.

307 ENCLOSURE 8 OF PL'FF'S EX. D.

(11.) (Copy.)

In the United States Land Office, Eureka, Nevada.

In the Matter of the Application of FRANZ O. MATTHIESSEN and LEBBEUS B. WARD for a Patent for a Mill Site at Hot Creek, Nye County, Nevada.

STATE OF NEVADA, } *ss:*
County of Eureka, }

A. E. CHENEY and THOMAS WREN, being first duly sworn, depose and say, each for himself and not one for the other, that they were present at the office of the register and receiver of the United States

land office at Eureka, Nevada, on the 8th day of January, A. D. 1883, and saw Richard Gluyas, attorney-in-fact of said Franz O. Matthiessen and Lebbeus B. Ward, present an application for a patent for the New Philadelphia mill and mill site, situate in the Hot Creek mining district, Nye county, State of Nevada, — the register and receiver of said United States land office, together with an abstract of title of said Franz O. Matthiessen and Lebbeus B. Ward to said mill site; the affidavits of Richard Gluyas, Knud Christian Hansen, and John Tatton of the non-mineral character of said mill site and proof of posting notice and diagram of the claim upon the claim; field-notes of the survey of said mill site made by George
308 Ernst, a deputy United States mineral surveyor, and approved and certified by E. S. Davis, United States surveyor general for the State of Nevada; agreement of Andrew Maute, publisher of the Belmont Courier, to publish the intention of said Matthiessen and Ward to apply for a patent for said mill site; notice for publication in said newspaper, and a plat of the claim of said Matthiessen and Ward upon the said New Philadelphia mill site; also a certified copy of a power of attorney from said Franz O. Matthiessen and Lebbeus B. Ward to said Richard Gluyas to make said application.

Affiants further depose and say that said Richard Gluyas, as attorney-in-fact for said Matthiessen and Ward, tendered to said register and receiver of said land office ten dollars, gold coin of the United States, as the fee for filing application, which said sum said register and receiver refused to receive and refused the same. Affiants further say that at said time said register and receiver refused said application of said Matthiessen and Ward, by said Richard Gluyas, as their attorney-in-fact, and rejected the same, and thereupon said Richard Gluyas, as attorney-in-fact for said Matthiessen and Ward, appealed to the Commissioner of the General Land Office, at Washington.

(Signed) THOS. WREN.
A. E. CHENEY.

Subscribed and sworn to before me this 8th day of January, A. D. 1883.

(Signed) F. H. HINCKLEY, *Register.*

Endorsed: Affidavit of Wren and Cheney in relation to the rejection by R. & R. of application for patent to the New Philadelphia mill site. Enclosure 8 of Plaintiff's Exhibit D. Filed Nov. 1, 1886. T. J. Edwards, clerk.

(Here follows diagram marked page 309.)

310 PL'FF'S EX. E (WASHINGTON).

N. Ellery C. Ford, attorney-at-law, &c.

WASHINGTON, D. C., *Feb'y* 8, 1883.

Hon. N. C. McFarland, Com'r G. L. O.

SIR: I desire to enter my appearance for the claimant- of certain

lands in sec. 33 & 34, 8 N., 50 E., M. D. M., under State selection list No. 24, filed with the R. & R. at Eureka, Nevada, as against the application of F. O. Matthiessen & L. B. Ward for a mill site embracing a portion of said land. I desire the usual time for the examination of the papers and the filing of argument.

Respectfully, E. C. FORD.

Endorsed: General Land Office, Feb'y 9, 1883. 12637. E. C. Ford, city. Feb'y 8, '83. Appearance for claimants of within-described lands, in Eureka dist., Nev. Ans. Feb'y 14, 1883. Referred to div. G Nov. 19, '83. D. E. F. C. A. B. 32–341. Plaintiff's Exhibit E. John B. Thompson, special examiner. Filed Nov. 1, 1886. T. J. Edwards, clerk.

311 PL'FF'S EX. F (WASHINGTON).

R., vol. 49, p. 494.

N. DEPARTMENT OF THE INTERIOR, D. E. F.
GENERAL LAND OFFICE, C. A. B.
WASHINGTON, D. C., *Sept.* 4, 1883.

Messrs. Curtis & Burdett, Washington, D. C.

GENTLEMEN: In the matter of the application of the State of Nevada to select, under the act of Congress approved June 16, 1880, the E ½ of S. E. ¼ of sec. 33, T. 8 N., R. 50 E., M. D. M., you are informed that by letter "G" of August 28, 1883, I have returned list No. 24, embracing said application, to the register and receiver at Eureka for correction.

Very respectfully, N. C. McFARLAND,
Commissioner.

Endorsed: 5197. Com. G. L. O., 4–4, Sept., 1883. 126. Nevada. Rel. to State selections. Plaintiff's Exhibit F. John B. Thompson, special examiner. Filed Nov. 1, 1886. T. J. Edwards, clerk.

312 PL'FF'S EX. G (WASHINGTON).

1883–5870, R., vol. 50, p. 220.

N. DEPARTMENT OF THE INTERIOR, D. E. F.
GENERAL LAND OFFICE, J. T.
WASHINGTON, D. C., *October* 18, 1883.

Messrs. Curtis & Burdett, Washington, D. C.

GENTLEMEN: In the matter of the application of the State of Nevada to select, under the act of Congress approved June 16, 1880, the E. ½ of S. E. ¼ of sec. 33, T. 8 N., R. 50 E., M. D. M., you are advised that list No. 24, embracing said application, which was sent to the register and receiver by letter "G," of August 28th last, for correction, has been returned to this office.

Very respectfully, N. C. McFARLAND,
Commissioner.

Endorsed: 5575. Com. G. L. O., 18–20, Octo., 1883. 126. Rel. to the Nevada State selection. Plaintiff's Exhibit G. John B. Thompson, special examiner. Filed Nov. 1, 1886. T. J. Edwards, clerk.

313 P'L'FF'S EX. H (WASHINGTON).

(9.) (Copy.)

Affidavit of Citizenship.

STATE OF NEW JERSEY,
City of Jersey City, County of Hudson, } ss:

FRANZ O. MATTHIESSEN, being first duly sworn according to law, deposes and says that he is the applicant, with Lebbeus B. Ward, for patent for the New Philadelphia mill-site claim, situated in Hot Creek mining district, county of Nye, State of Nevada; that he is a naturalized citizen of the United States, born in Germany in the year 1833, and is now a resident of New York city, county, and State.

And deponent further says that he was naturalized a citizen of the United States at Jersey City, Hudson county, New Jersey, May eleventh, eighteen hundred and seventy-one, before the court of common pleas of Hudson county, State of New Jersey.

F. O. MATTHIESSEN.

Subscribed and sworn to before me this 13th day of January, A. D. 1883.

WILLARD C. FISK,
[SEAL.] *Notary Public, New Jersey.*

314 (10.) (Copy.)

Affidavit of Citizenship.

STATE OF NEW YORK,
City and County of New York, } ss:

LEBBEUS B. WARD, being first duly sworn according to law, deposes and says that he is the applicant, with Franz O. Matthiessen, for patent for the New Philadelphia mill-site claim, situated in Hot Creek mining district, county of Nye, State of Nevada; that he is a native citizen of the United States, born in Vergennes, county of Addison, State of Vermont, in the year 1834, and is now a resident of Jersey City, Hudson county, and State of New Jersey.

LEBBEUS B. WARD.

Subscribed and sworn to before me this twelfth day of January, A. D. 1883.

HENRY SCHMITT,
[SEAL.] *Notary Public, N. Y. Co.*

LAW OFFICE CURTIS & BURDETT, &C.,
WASHINGTON, D. C., *January* 23*d*, 1883.

Hon. N. C. McFarland, Commissioner of the General Land Office.

SIR: In the matter of the application for patent on the New Philadelphia mill-site, Eureka l'nd district, Nevada, which has been refused by the register and forwarded to your office for action, we herewith enter our appearance as attorneys for the applicants, and respectfully ask that we may be advised of any action taken.

We beg to enclose herewith affidavits of the applicants as to citizenship to complete the proofs on file.

Very respectfully, CURTIS & BURDETT.

Endorsed: General Land Office, Jan. 24, 1883. 7879. Curtis & Burdett, city. Jan. 23, '83. Encl. aff'ts of citizenship of applicants for patent to New Philadelphia mill site & enter appearance. Ans. Jan'y 30, 1883. Nov. 19, '83, ref'd to div. G. D. E. F. C. A. B. 32–341. Plaintiff's Exhibit H. John B. Thompson, special examiner. Filed Nov. 1, 1886. T. J. Edwards, clerk.

315 N. DEPARTMENT OF THE INTERIOR, D. E. F.
GENERAL LAND OFFICE, J. F.
WASHINGTON, D. C., *January* 26, 1886. W. O. C.

I, Wm. A. J. Sparks, Commissioner of the General Land Office, do hereby certify that the annexed copy of circulars dated October 29, 1881, April 27, 1880, September 23, 1880, May 9, 1882, September 22, 1882, December 9, 1882, and November 16, 1882, is a true and literal exemplification of official instructions in force from September, 1882, to June, 1883, inclusive.

In testimony whereof I have hereunto subscribed my name and caused the seal of this office to be affixed, at the city of Washington, on the day and year above written.

WM. A. J. SPARKS,
Commissioner of General Land Office.

316 PL'FF'S EX. I (WASHINGTON).

General Land Office.

United States Mining Laws and Regulations Thereunder.

Circular of October 31, 1881, including circulars of April 27, 1880, September 23d, 1880, and later circulars.

317 *United States Mining Laws and Regulations Thereunder.*

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE, *October* 29, 1881.

GENTLEMEN: Your attention is invited to the Revised Statutes of the United States and the amendments thereto in regard to

Mining Laws and Mining Resources.

Title XXXII, chapter 6.

Mineral lands reserved.

4 July, 1866, c. 166, s. 5, v. 14, p. 86.

SECTION 2318. In all cases lands valuable for minerals shall be reserved from sale, except as otherwise expressly directed by law.

Mineral lands open to purchase by citizens.

10 May, 1872, c. 152, s. 1, v. 17, p. 91.

U. S. *vs.* Gear, 3 How., 120.

SEC. 2319. All valuable mineral deposits in lands belonging to the United States, both surveyed and unsurveyed, are hereby declared to be free and open to exploration and purchase and the lands in which they are found to occupation and purchase by citizens of the United States and those who have declared their intention to become such, under regulations prescribed by law and according to the local customs or rules of miners in the several mining districts, so far as the same are applicable and not inconsistent with the laws of the United States.

Length of mining claims upon veins or lodes.

10 May, 1872, c. 152, s. 2, v. 17, p. 91.

SEC. 2320. Mining claims upon veins or lodes of quartz or other rock in place bearing gold, silver, cinnabar, lead, tin, copper, or other valuable deposits heretofore located shall be governed as to length along the vein or lode by the customs, regulations, and laws in force at the date of their location. A mining claim located after the tenth day of May, eighteen hundred and seventy-two, whether located by one or more persons, may equal, but shall not exceed, one thousand five hundred feet in length along the vein or lode; but no location of a mining claim shall be made until the discovery of the vein or lode within the limits of the claim located. No claim shall extend more than three hundred feet on each side of the middle of the vein at the surface nor shall

any claim be limited by any mining regulation to less than twenty-five feet on each side of the middle of the vein at the surface, except where adverse rights existing on the tenth day of May, eighteen hundred and seventy-two, render such limitation necessary. The end lines of each claim shall be parallel to each other.

Proof of citizenship.

10 May, 1872, c. 152, s. 7, v. 17, p. 94.

318 SEC. 2321. Proof of citizenship under this chapter may consist, in the case of an individual, of his own affidavit thereof; in the case of an association of persons unincorporated, of the affidavit of their authorized agent, made on his own knowledge or upon information and belief, and in the case of a corporation organized under the laws of the United States or of any State or Territory thereof, by the filing of a certified copy of their charter or certificate of incorporation.

Locator's rights of possession and enjoyment.

10 May, 1872, c. 152, s. 3, v. 17, p. 91.

SEC. 2322. The locators of all mining locations heretofore made or which shall hereafter be made on any mineral vein, lode, or ledge situated on the public domain, their heirs and assigns, where no adverse claim exists on the tenth day of May, eighteen hundred and seventy-two, so long as they comply with the laws of the United States and with State, territorial, and local regulations not in conflict with the laws of the United States governing their possessory title, shall have the exclusive right of possession and enjoyment of all the surface included within the lines of their locations and of all veins, lodes, and ledges throughout their entire depth, the top or apex of which lies inside of such surface lines extended downward vertically, although such veins, lodes, or ledges may so far depart from a perpendicular in their course downward as to extend outside the vertical side lines of such surface locations; but their right of possession to such outside parts of such veins or ledges shall be confined to such portions thereof as lie between vertical planes drawn downward, as above described, through the end lines of their locations, so continued in their own direction that such planes will intersect such exterior parts of such veins or ledges; and nothing in this section shall authorize the locator or possessor of a vein or lode which extends in its downward course beyond the vertical lines of his claim to enter upon the surface of a claim owned or possessed by another.

Owners of tunnels, rights of.

10 May, 1872, c. 152, s. 4, v. 17, p. 92.

SEC. 2323. Where a tunnel is run for the development of a vein or lode or for the discovery of mines the owners of such tunnel shall have

the right of possession of all veins or lodes within three thousand feet from the face of such tunnel on the line thereof not previously known to exist discovered in such tunnel to the same extent as if discovered from the surface; and locations on the line of such tunnel of veins or lodes not appearing on the surface made by other parties after the commencement of the tunnel and while the same is being prosecuted with reasonable diligence shall be invalid; but failure to prosecute the work on the tunnel for six months shall be considered as an abandonment of the right to all undiscovered veins on the line of such tunnel.

Regulations made by miners.

10 May, 1872, c. 152, s. 5, v. 17, p. 92.

SEC. 2324. The miners of each mining district may make regulations not in conflict with the laws of the United States or with the laws of the State or Territory in which the district is situated governing the location, manner of recording, amount of work necessary to hold possession of a mining claim, subject to the following requirements: The location must be distinctly marked on the ground, so that
319 its boundaries can be readily traced. All records of mining claims hereafter made shall contain the name or names of the locators, the date of the location, and such a description of the claim or claims located by reference to some natural object or permanent monument as will identify the claim. On each claim located after the tenth day of May, eighteen hundred and seventy-two, and until a patent has been issued therefor, not less than one hundred dollars' worth of labor shall be performed or improvements made during each year. On all claims located prior to the tenth day of May, eighteen hundred and seventy-two, ten dollars' worth of labor shall be performed or improvements made by the tenth day of June, eighteen hundred and seventy-four, and each year thereafter for each one hundred feet in length along the vein until a patent has been issued therefor; but where such claims are held in common such expenditure may be made upon any one claim; and upon a failure to comply with these conditions the claim or mine upon which such failure occurred shall be open to relocation in the same manner as if no location of the same had ever been made, provided that the original locators, their heirs, assigns, or legal representatives, have not resumed work upon the claim after failure and before such location. Upon the failure of any one of several co-owners

to contribute his proportion of the expenditures required hereby, the co-owners who have performed the labor or made the improvements may, at the expiration of the year, give such delinquent co-owner personal notice in writing or notice by publication in the newspaper published nearest the claim for at least once a week for ninety days, and if at the expiration of ninety days after such notice in writing or by publication such delinquent should fail or refuse to contribute his proportion of the expenditure required by this section his interest in the claim shall become the property of his co-owners who have made the required expenditures.

Patents for mineral lands, how obtained.

10 May, 1872, c. 152, s. 6, v. 17, p. 92.

SEC. 2325. A patent for any land claimed and located for valuable deposits may be obtained in the following manner: Any person, association, or corporation authorized to locate a claim under this chapter, having claimed and located a piece of land for such purposes, who has or have complied with the terms of this chapter may file in the proper land office an application for a patent under oath showing such compliance, together with a plat and field-notes of the claim or claims in common, made by or under the direction of the United States surveyor general, showing accurately the boundaries of the claim or claims, which shall be distinctly marked by monuments on the ground, and shall post a copy of such plat, together with a notice of such application for a patent, in a conspicuous place on the land embraced in such plat previous to the filing of the application for a patent, and shall file an affidavit of at least two persons that such notice has been duly posted, and shall file a copy of the notice in such land office, and shall thereupon be entitled to a patent for the land in the manner following: The register of the land office, upon the filing
320 of such application, plat, field-notes, notices, and affidavits, shall publish a notice that such application has been made for the period of sixty days in a newspaper to be by him designated as published near to such claim, and he shall also post such notice in his office for the same period. The claimant at the time of filing this application or at any time thereafter within the sixty days of publication shall file with the register a certificate of the United States surveyor general that five hundred dollars' worth of labor has been expended or improvements made upon the claim by himself or grantors; that the plat is

correct, with such further description by such reference to natural objects or permanent monuments as shall identify the claim, and furnish an accurate description to be incorporated in the patent. At the expiration of the sixty days of publication the claimant shall file his affidavit showing that the plat and notice have been posted in a conspicuous place on the claim during such period of publication. If no adverse claim shall have been filed with the register and the receiver of the proper land office at the expiration of the sixty days of publication it shall be assumed that the applicant is entitled to a patent upon the payment to the proper officer of five dollars per acre, and that no adverse claim exists; and thereafter no objection from third parties to the issuance of a patent shall be heard, except it be shown that the applicant has failed to comply with the terms of this chapter.

Adverse claim, proceedings on.

10 May, 1872, c. 152, s. 7, v. 17, p. 93.

SEC. 2326. Where an adverse claim is filed during the period of publication it shall be upon oath of the person or persons making the same and shall show the nature, boundaries, and extent of such adverse claim, and all proceedings, except the publication of notice and making and filing of the affidavit thereof, shall be stayed until the controversy shall have been settled or decided by a court of competent jurisdiction or the adverse claim waived. It shall be the duty of the adverse claimant within thirty days after filing his claim to commence proceedings in a court of competent jurisdiction to determine the question of the right of possession and prosecute the same with reasonable diligence to final judgment; and a failure so to do shall be a waiver of his adverse claim. After such judgment shall have been rendered the party entitled to the possession of the claim or any portion thereof may, without giving further notice, file a certified copy of the judgment-roll with the register of the land office, together with the certificate of the surveyor general that the requisite amount of labor has been expended or improvements made thereon and the description required in other cases, and shall pay to the receiver five dollars per acre for his claim, together with the proper fees, whereupon the whole proceedings and the judgment-roll shall be certified by the register to the Commissioner of the General Land Office and a patent shall issue thereon for the claim or such portion thereof as the applicant shall appear from the decision of the court

to rightly possess. If it appears from the decision of the court that several parties are entitled to separate and different portions of the claim each party may pay for his portion of
321 the claim, with the proper fees, and file the certificate and description by the surveyor general, whereupon the register shall certify the proceedings and judgment-roll to the Commissioner of the General Land Office, as in the preceding case, and patents shall issue to the several parties according to their respective rights. Nothing herein contained shall be construed to prevent the alienation of a title conveyed by a patent for a mining claim to any person whatever.

Description of vein claim on surveyed and unsurveyed lands.

10 May, 1872, c. 152, s. 8, v. 17, p. 94.

SEC. 2327. The description of vein or lode claims upon surveyed lands shall designate the location of the claim with reference to the lines of the public surveys, but need not conform therewith; but where a patent shall be issued for claims upon unsurveyed lands the surveyor general, in extending the surveys, shall adjust the same to the boundaries of such patented claims, according to the plat or description thereof, but so as in no case to interfere with or change the location of any such patented claim.

Pending applications; existing rights.

10 May, 1872, c. 152, s. 9, v. 17, p. 94.

SEC. 2328. Applications for patents for mining claims under former laws now pending may be prosecuted to a final decision in the General Land Office; but in such cases, where adverse rights are not affected thereby, patents may issue in pursuance of the provisions of this chapter; and all patents for mining claims upon veins or lodes heretofore issued shall convey all the rights and privileges conferred by this chapter where no adverse rights existed on the tenth day of May, eighteen hundred and seventy-two.

Conformity of placer claims to surveys, limit of.

9 July, 1870, c. 235, s. 12, v. 16, p. 217.

SEC. 2329. Claims usually called "placers," including all forms of deposit, excepting veins of quartz or other rock in place, shall be subject to entry and patent, under like circumstances and conditions and upon similar proceedings as are provided for vein or lode claims; but where the lands have been previously surveyed by the United States the entry in its exterior limits shall conform to the legal subdivisions of the public lands.

Subdivisions of ten-acre tracts; maximum of placer locations.

9 July, 1870, c. 235, s. 12, v. 16, p. 217.

SEC. 2330. Legal subdivisions of forty acres may be subdivided into ten-acre tracts; and two or more persons or associations of persons, having contiguous claims of any size, although such claims may be less than ten acres each, may make

joint entry thereof; but no location of a placer claim, made after the ninth day of July, eighteen hundred and seventy, shall exceed one hundred and sixty acres for any one person or association of persons, which location shall conform to the United States surveys; and nothing in this section contained shall defeat or impair any *bona fide* pre-emption or homestead claim upon agricultural lands or authorize the sale of the improvements of any *bona fide* settler to any purchaser.

Conformity of placer claims to surveys; limitation of claims.

10 May, 1872, c. 125, s. 10, v. 17, p. 94.

SEC. 2331. Where placer claims are upon surveyed lands and conform to legal subdivisions no further survey or plat shall be required, and all placer-mining claims located after the tenth day of May, eighteen hundred and seventy-two, shall conform as near as practicable with the United States system of public land surveys and the rectangular subdivisions of such surveys, and no such location shall include more than twenty
322 acres for each individual claimant; but where placer claims cannot be conformed to legal subdivisions, survey and plat shall be made as on unsurveyed lands; and where by the segregation of mineral lands in any legal subdivisions a quantity of agricultural land less than forty acres remains, such fractional portion of agricultural land may be entered, by any party qualified by law, for homestead or pre-emption purposes.

What evidence of possession, &c., to establish a right to a patent.

9 July, 1870, c. 235, s. 13, v. 16, p. 217.

SEC. 2332. Where such person or association, they and their grantors, have held and worked their claims for a period equal to the time prescribed by the statute of limitations for mining claims of the State or Territory where the same may be situated, evidence of such possession and working of the claims for such period shall be sufficient to establish a right to a patent thereto under this chapter, in the absence of any adverse claim; but nothing in this chapter shall be deemed to impair any lien which may have attached in any way whatever to any mining claim or property thereto attached prior to the issuance of a patent.

Proceedings for patent for placer claim, &c.

10 May, 1872, c. 152, s. 11, v. 17, p. 94.

SEC. 2333. Where the same person, association, or corporation is in possession of a placer claim, and also a vein or lode included within the boundaries thereof, application shall be made for a patent for the placer claim, with the statement that it includes such vein or lode, and in such case a patent shall issue for the placer claim, subject to the provisions of this chapter, including

such vein or lode, upon the payment of five dollars per acre for such vein or lode claim and twenty-five feet of surface on each side thereof. The remainder of the placer claim, or any placer claim not embracing any vein or lode claim, shall be paid for at the rate of two dollars and fifty cents per acre, together with all costs of proceedings; and where a vein or lode, such as is described in section twenty-three hundred and twenty, is known to exist within the boundaries of a placer claim, an application for a patent for such placer claim which does not include an application for the vein or lode claim shall be construed as a conclusive declaration that the claimant of the placer claim has no right of possession of the vein or lode claim; but where the existence of a vein or lode in a placer claim is not known, a patent for the placer claim shall convey all valuable mineral and other deposits within the boundaries thereof.

Surveyor general to appoint surveyors of mining claims, &c.

10 May, 1872, c. 152, s. 12, v. 17, p. 95.

SEC. 2334. The surveyor general of the United States may appoint in each land district containing mineral lands as many competent surveyors as shall apply for appointment to survey mining claims. The expenses of the survey of vein or lode claims and the survey and subdivision of placer claims into smaller quantities than one hundred and sixty acres, together with the cost of publication of notices, shall be paid by the applicants, and they shall be at liberty to obtain the same at the most reasonable rates, and they shall also be at liberty to employ any United States deputy surveyor to make the survey. The Commissioner of the General Land Office shall also have power to establish the maximum charges for surveys and publication of notices under this chapter; and, in case of excessive charges
323 for publication, he may designate any newspaper published in a land district where mines are situated for the publication of mining notices in such district, and fix the rates to be charged by such paper; and, to the end that the Commissioner may be fully informed on the subject, each applicant shall file with the register a sworn statement of all charges and fees paid by such applicant for publication and surveys, together with all fees and money paid the register and the receiver of the land office, which statement shall be transmitted, with the other papers in the case, to the Commissioner of the General Land Office.

Verification of affidavits, &c.

10 May, 1872, c. 152, s. 13, v. 17, p. 95.

SEC. 2335. All affidavits required to be made under this chapter may be verified before any officer authorized to administer oaths within the land district where the claims may be situated, and all testimony and proofs may be taken before any such officer, and, when duly certified by the officer taking the same, shall have the same force and effect as if taken before the register and receiver of the land office. In cases of contest as to the mineral or agricultural character of the land, the testimony and proofs may be taken, as herein provided, on personal notice of at least ten days to the opposing party, or if such party cannot be found, then by publication of at least once a week for thirty days in a newspaper to be designated by the register of the land office as published nearest to the location of such land, and the register shall require proof that such notice has been given.

Where veins intersect, &c.

10 May, 1872, c. 152, s. 14, v. 17, p. 96.

SEC. 2336. Where two or more veins intersect or cross each other priority of title shall govern, and such prior location shall be entitled to all ore or mineral contained within the space of intersection, but the subsequent location shall have the right of way through the space of intersection for the purposes of the convenient working of the mine; and where two or more veins unite the oldest or prior location shall take the vein below the point of union, including all the space of intersection.

Patents for non-mineral lands, &c.

10 May, 1872, c. 152, s. 15, v. 17, p. 96.

SEC. 2337. Where non-mineral land not contiguous to the vein or lode is used or occupied by the proprietor of such vein or lode for mining or milling purposes such non-adjacent surface ground may be embraced and included in an application for a patent for such vein or lode and the same may be patented therewith, subject to the same preliminary requirements as to survey and notice as are applicable to veins or lodes, but no location hereafter made of such non-adjacent land shall exceed five acres, and payment for the same must be made at the same rate as fixed by this chapter for the superficies of the lode. The owner of a quartz mill or reduction works not owning a mine in connection therewith may also receive a patent for his mill site, as provided in this section.

What conditions of sale may be made by local Legislature.

26 July, 1866, c. 262, s. 5, v. 14, p. 252.

SEC. 2338. As a condition of sale, in the absence of necessary legislation by Congress, the local Legislature of any State or Territory may provide rules for working mines, involving easements, drainage, and other necessary means to their com-

plete development, and those conditions shall be fully expressed in the patent.

Vested rights to use of water for mining, &c.; right of way for canals.

26 July, 1866, c. 262, s. 9, v. 14, p. 253.

324 SEC. 2339. Whenever by priority of possession rights to the use of water for mining, agricultural, manufacturing, or other purposes have vested and accrued and the same are recognized and acknowledged by the local customs, laws, and the decisions of courts, the possessors and owners of such vested rights shall be maintained and protected in the same, and the right of way for the construction of ditches and canals for the purposes herein specified is acknowledged and confirmed, but whenever any person in the construction of any ditch or canal injures or damages the possession of any settler on the public domain the party committing such injury or damage shall be liable to the party injured for such injury or damage.

Patents, pre-emptions, and homesteads subject to vested and accrued water rights.

9 July, 1870, c. 235, s. 17, v. 16, p. 218.

SEC. 2340. All patents granted or pre-emption or homesteads allowed shall be subject to any vested and accrued water rights or rights to ditches and reservoirs used in connection with such water rights as may have been acquired under or recognized by the preceding section.

Mineral lands in which no valuable mines are discovered open to homesteads.

26 July, 1866, c. 262, s. 10, v. 14, p. 253.

SEC. 2341. Wherever upon the lands heretofore designated as mineral lands, which have been excluded from survey and sale, there have been homesteads made by citizens of the United States or persons who have declared their intention to become citizens, which homesteads have been made, improved, and used for agricultural purposes and upon which there have been no valuable mines of gold, silver, cinnabar, or copper discovered, and which are properly agricultural lands, the settlers or owners of such homesteads shall have a right of pre-emption thereto and shall be entitled to purchase the same at the price of one dollar and twenty-five cents per acre and in quantity not to exceed one hundred and sixty acres, or they may avail themselves of the provisions of chapter five of this title relating to "homesteads."

Mineral lands, how set apart as agricultural lands.

26 July, 1866, c. 262, s. 11, v. 14, p. 253.

SEC. 2342. Upon the survey of the lands described in the preceding section the Secretary of the Interior may designate and set apart such portions of the same as are clearly agricultural lands, which lands shall thereafter be subject to pre-emption and sale as other public lands and be subject to all the laws and regulations applicable to the same.

Additional land districts and officers, power of the President to provide.

26 July, 1866, c. 262, s. 7, v. 14, p. 252.

SEC. 2343. The President is authorized to establish additional land districts and to appoint the necessary officers under existing laws wherever he may deem the same necessary for the public convenience in executing the provisions of this chapter.

Provisions of this chapter not to affect certain rights.

10 May, 1872, c. 152, s. 16, v. 17, p. 96.

9 July, 1870, c. 235, s. 17, v. 16, p. 218.

SEC. 2344. Nothing contained in this chapter shall be construed to impair in any way rights or interests in mining property acquired under existing laws, nor to affect the provisions of the act entitled "An act granting to A. Sutro the right of way and other privileges to aid in the construction of a draining and exploring tunnel to the Comstock lode in the State of Nevada," approved July twenty-five, eighteen hundred and sixty-six."

Mineral lands in certain States excepted.

18 Feb., 1873, c. 159, v. 17, p. 465.

SEC. 2345. The provisions of the preceding sections of this chapter shall not apply to the mineral lands situated in the States of Michigan, Wisconsin, and Minnesota, which are declared free and open to exploration and purchase according to legal subdivisions in like manner as before the tenth day of May, eighteen hundred and seventy-two, and any *bona fide* entries of such lands within the States named since the tenth of May, eighteen hundred and seventy-two, may be patented without reference to any of the foregoing provisions of this chapter. Such lands shall be offered for public sale in the same manner, at the same minimum price, and under the same rights of pre-emption as other public lands.

Grants of lands to States or corporations not to include mineral lands.

30 Jan., 1865, Res. No. 10, v. 13, p. 567.

SEC. 2346. No act passed at the first session of the Thirty-eighth Congress granting lands to States or corporations to aid in the construction of roads or for other purposes or to extend the time of grants made prior to the thirtieth day of January, eighteen hundred and sixty-five, shall be so construed as to embrace mineral lands, which in all cases are reserved exclusively to the United States, unless otherwise specially provided in the act or acts making the grant.

Repeal Provisions.

Title LXXIV.

What Revised Statutes embrace.

SEC. 5595. The foregoing seventy-three titles embrace the statutes of the United States general and permanent in their nature, in force on the 1st day of December, one thousand eight hundred and seventy-three, as revised and consolidated by com-

missioners appointed under an act of Congress, and the same shall be designated and cited as the Revised Statutes of the United States.

Repeal of acts embraced in revision.

SEC. 5596. All acts of Congress passed prior to said first day of December, one thousand eight hundred and seventy-three, any portion of which is embraced in any section of said revision are hereby repealed, and the section applicable thereto shall be in force in lieu thereof, all parts of such acts not contained in such revision having been repealed or superseded by subsequent acts or not being general and permanent in their nature: Provided, That the incorporation into such revision of any general and permanent provision taken from an act making appropriations or from an act containing other provisions of a private, local, or temporary character shall not repeal or in any way affect any appropriation or any provision of a private, local, or temporary character contained in any of said acts, but the same shall remain in force; and all acts of Congress passed prior to said last-named day no part of which are embraced in said revision shall not be affected or changed by its enactments.

Accrued rights reserved.

SEC. 5597. The repeal of the several acts embraced in said revision shall not affect any act done or any right accruing or accrued or any suit or proceeding had or commenced in any civil cause before the said repeal, but all rights and liabilities under said acts shall continue and may be enforced in the same manner as if said repeal had not been made; nor shall said repeal in any manner affect the right to any office or change the term or tenure thereof.

Prosecutions and punishments.

326 SEC. 5598. All offenses committed and all penalties or forfeitures incurred under any statute embraced in said revision prior to said repeal may be prosecuted and punished in the same manner and with the same effect as if said repeal had not been made.

Acts of limitation.

SEC. 5599. All acts of limitation, whether applicable to civil causes and proceedings or to the prosecution of offenses or for the recovery of penalties or forfeitures, embraced in said revision and covered by said repeal shall not be affected thereby, but all suits, proceedings, or prosecutions, whether civil or criminal, for causes arising or acts done or committed prior to said repeal may be commenced and prosecuted within the same time as if said repeal had not been made.

Arrangement and classification of sections.

SEC. 5600. The arrangement and classification of the several sections of the revision have been made for the purpose of a more convenient and orderly arrangement of the same, and therefore no inference or presumption of a legislative construction is to be drawn by reason of the title under which any particular section is placed.

Acts passed since Dec. 1, 1873, not affected.

SEC. 5601. The enactment of the said revision is not to affect or repeal any act of Congress passed since the 1st day of December, one thousand eight hundred and seventy-three, and all acts passed since that date are to have full effect, as if passed after the enactment of this revision, and so far as such acts vary from or conflict with any provision contained in said revision they are to have effect as subsequent statutes and as repealing any portion of the revision inconsistent therewith.

Approved June 22, 1874.

The following is an act of Congress approved June 6, 1874:

An act to amend the act entitled "An act to promote the development of the mining resources of the United States," passed May tenth, eighteen hundred and seventy-two.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the provisions of the fifth section of the act entitled "An act to promote the development of the mining resources of the United States," passed May tenth, eighteen hundred and seventy-two, which requires expenditures of labor and improvements on claims located prior to the passage of said act, are hereby so amended that the time for the first annual expenditure on claims located prior to the passage of said act shall be extended to the first day of January, eighteen hundred and seventy-five.

The following is an act of Congress approved February 11, 1875:

An act to amend section two thousand three hundred and twenty-four of the Revised Statutes, relating to the development of the mining resources of the United States.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That section
327 two thousand three hundred and twenty-four of the Revised Statutes be, and the same is hereby, amended so that where a person or company has or may run a tunnel for the purposes of developing a lode or lodes owned by said person or company the money so expended in said tunnel shall be taken and considered as expended on said lode or lodes, whether located prior to or since the passage of said act, and such person or company shall not be required to perform work on the surface of said lode or lodes in order to hold the same as required by said act.

The following is an act of Congress approved May 5, 1876:

An act to exclude the States of Missouri and Kansas from the provisions of the act of Congress entitled "An act to promote the development of the mining resources of the United States," approved May tenth, eighteen hundred and seventy-two.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That within the States of Missouri and Kansas deposits of coal, iron, lead, or other mineral be, and they are hereby, excluded from the operation of the act entitled "An act to promote the development of the mining resources of the United States," approved May tenth, eighteen hundred and seventy-two, and all lands in said States shall be subject to disposal as agricultural lands.

The following is an act of Congress approved June 3, 1878:

An act authorizing the citizens of Colorado, Nevada, and the Territories to fell and remove timber on the public domain for mining and domestic purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That all citizens of the United States and other persons, *bona fide* residents of the State of Colorado or Nevada or either of the Territories of New Mexico, Arizona, Utah, Wyoming, Dakota, Idaho, or Montana, and all other mineral districts of the United States shall be, and are hereby, authorized and permitted to fell and remove, for building, agricultural, mining, or other domestic purposes, any timber or other trees growing or being on the public lands, said lands being mineral and not subject to entry under existing laws of the United States except for mineral entry, in either of said States, Territories, or districts of which such citizens or persons may be at the time *bona fide* residents, subject to such rules and regulations as the Secretary of the Interior may prescribe for the protection of the timber and of the undergrowth growing upon such lands, and for other purposes: Provided, the provisions of this act shall not extend to railroad corporations.

SEC. 2. That it shall be the duty of the register and the receiver of any local land office in whose district any mineral land may be situated to ascertain from time to time whether any timber is being cut or used upon any such lands except for the purposes authorized by this act within their respective land districts; and, if so, they shall immediately notify the Commissioner of the General Land Office of that fact, and all necessary expenses incurred in making such proper examinations shall be paid and allowed such
328 register and receiver in making up their next quarterly accounts.

SEC. 3. Any person or persons who shall violate the provisions of this act or any rules and regulations in pursuance thereof made by the Secretary of the Interior shall be deemed guilty of a misde-

meanor, and, upon conviction, shall be fined in any sum not exceeding five hundred dollars, and to which may be added imprisonment for any term not exceeding six months.

The following is an act of Congress approved January 22, 1880:

An act to amend sections twenty-three hundred and twenty-four and twenty-three hundred and twenty-five of the Revised Statutes of the United States, concerning mineral lands.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That section twenty-three hundred and twenty-five of the Revised Statutes of the United States be amended by adding thereto the following words: "Provided, That where the claimant for a patent is not a resident of or within the land district wherein the vein, lode, ledge, or deposit sought to be patented is located the application for patent and the affidavits required to be made in this section by the claimant for such patent may be made by his, her, or its authorized agent where said agent is conversant with the facts sought to be established by said affidavits: And provided, That this section shall apply to all applications now pending for patents to mineral lands."

SEC. 2. That section twenty-three hundred and twenty-four of the Revised Statutes of the United States be amended by adding the following words: "Provided, That the period within which the work required to be done annually on all unpatented mineral claims shall commence on the first day of January succeeding the date of location of such claim; and this section shall apply to all claims located since the tenth day of May, anno Domini eighteen hundred and seventy-two."

The following is an act of Congress approved March 3, 1881:

An act to amend section twenty-three hundred and twenty-six of the Revised Statutes, relating to suits at law affecting the title to mining claims.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That if, in any action brought pursuant to section twenty-three hundred and twenty-six of the Revised Statutes, title to the ground in controversy shall not be established by either party, the jury shall so find, and judgment shall be entered according to the verdict. In such case costs shall not be allowed to either party, and the claimant shall not proceed in the land office or be entitled to a patent for the ground in controversy until he shall have perfected his title.

329 Mineral lands open to exploration, occupation, and purchase.

1. It will be perceived that by the foregoing provisions of law the mineral lands in the public domain, surveyed or unsurveyed, are open to exploration, occupation, and purchase by all citizens of the United States and all those who have declared their intention to become such.

Status of lode claims located prior to May 10, 1872.

2. By an examination of the several sections of the Revised Statutes it will be seen that the status of lode claims located previous to the 10th May, 1872, is not changed with regard to their extent along the lode or width of surface.

3. Mining rights acquired under such previous locations are, however, enlarged by said Revised Statutes in the following respect, viz: The locators of all such previously taken veins or lodes, their heirs and assigns, so long as they comply with the laws of Congress and with State, territorial, or local regulations not in conflict therewith governing mining claims, are invested with the exclusive possessory right of all the surface included within the lines of their locations and of all veins, lodes, or ledges throughout their entire depth, the top or apex of which lies inside of such surface lines extended downward vertically, although such veins, lodes, or ledges may so far depart from a perpendicular in their course downward as to extend outside the vertical side lines of such locations at the surface, it being expressly provided, however, that the right of possession to such outside parts of said veins or ledges shall be confined to such portions thereof as lie between vertical planes drawn downward as aforesaid through the end lines of their locations, so continued in their own direction that such planes will intersect such exterior parts of such veins, lodes, or ledges, no right being granted, however, to the claimant of such outside portion of a vein or ledge to enter upon the surface location of another claimant.

4. It is to be distinctly understood, however, that the law limits the possessory right to veins, lodes, or ledges, other than the one named in the original location, to such as were not adversely claimed on May 10, 1872, and that where such other vein or ledge was so adversely claimed at that date the right of the party so adversely claiming is in no way impaired by the provisions of the Revised Statutes.

5. In order to hold the possessory title to a mining claim located prior to May 10, 1872, and for which a patent has not been issued the law requires that ten dollars shall be expended annually in labor or improvements on each claim of one hundred feet on the course of the vein or lode until a patent shall have been issued therefor; but where a number of such claims are held in common upon the same vein or lode the aggregate expenditure that would be necessary to hold all the claims, at the rate of ten dollars per hundred feet, may be made upon any one claim, a failure to comply with this requirement in any one year subjecting the claim upon which such failure occurred to relocation by other parties, the same as if no previous location thereof had ever been made, unless the claimants under the original location shall have resumed work thereon after such failure and before such relocation. The first annual expenditure upon claims of this class should have been performed subsequent to May 10, 1872, and prior to January 1, 1875. From and after January 1, 1875, the required amount must be expended annually until patent issues. By decision of the honorable Secre-

330 tary of the Interior dated March 4, 1879, such annual expenditures are not required subsequent to entry, the date of issuing the patent certificate being the date contemplated by statute.

6. Upon the failure of any one of several co-owners of a vein, lode, or ledge which has not been entered to contribute his proportion of the expenditures necessary to hold the claim or claims so held in ownership in common the co-owners who have performed the labor or made the improvements as required by said Revised Statutes may, at the expiration of the year, give such delinquent co-owner personal notice in writing or notice by publication in the newspaper published nearest the claim for at least once a week for ninety days; and if, upon the expiration of ninety days after such notice in writing or upon the expiration of one hundred and eighty days after the first newspaper publication of notice, the delinquent co-owner shall have failed to contribute his proportion to meet such expenditures or improvements, his interest in the claim, by law, passes to his co-owners who have made the expenditures or improvements as aforesaid. Where a claimant alleges ownership of a forfeited interest under the foregoing provision the sworn statement of the publisher as to the facts of publication, giving dates and a printed copy of the notice published, should be furnished, and the claimant must swear that the delinquent co-owner failed to contribute his proper proportion within the period fixed by the statute.

Patents for veins or lodes heretofore issued.

7. Rights under patents for veins or lodes heretofore granted under previous legislation of Congress are enlarged by the Revised Statutes so as to invest the patentee, his heirs or assigns, with title to all veins, lodes, or ledges throughout their entire depth, the top or apex of which lies within the end and side boundary lines of his claim on the surface, as patented, extended downward vertically, although such veins, lodes, or ledges may so far depart from a perpendicular in their course downward as to extend outside the vertical side lines of the claim at the surface, the right of possession to such outside parts of such veins or ledges to be confined to such portions thereof as lie between vertical planes drawn downward through the end lines of the claims at the surface, so continued in their own direction that such planes will intersect such exterior parts of such veins or ledges; it being expressly provided, however, that all veins, lodes, or ledges, the top or apex of which lies inside such surface locations, other than the one named in the patent, which were adversely claimed on the 10th May, 1872, are excluded from such conveyance by patent.

8. Applications for patents for mining claims pending at the date of the act of May 10, 1872, may be prosecuted to final decision in the General Land Office, and where no adverse rights are affected thereby patents will be issued in pursuance of the provisions of the Revised Statutes.

Manner of locating claims on veins or lodes after May 10, 1872.

9. From and after the 10th May, 1872, any person who is a citizen of the United States or who has declared his intention to become a citizen may locate, record, and hold a mining claim of fifteen hundred linear feet along the course of any mineral vein or lode subject to location, or an association of persons, severally qualified
331 as above, may make joint location of such claim of fifteen hundred feet; but in no event can a location of a vein or lode made subsequent to May 10, 1872, exceed fifteen hundred feet along the course thereof, whatever may be the number of persons composing the association.

10. With regard to the extent of surface ground adjoining a vein or lode and claimed for the convenient working thereof, the Revised Statutes provide that the lateral extent of locations of veins or lodes made after May 10, 1872, shall in no case exceed three hundred feet on each side of the middle of the vein at the surface, and that no such surface rights shall be limited by any mining regulations to less than twenty-five feet on each side of the middle of the vein at the surface, except where adverse rights existing on the 10th May, 1872, may render such limitation necessary; the end lines of such claims to be in all cases parallel to each other. Said lateral measurements cannot extend beyond three hundred feet on either side of the middle of the vein at the surface, or such distance as is allowed by local laws. For example, 400 feet cannot be taken on one side and 200 feet on the other. If, however, 300 feet on each side are allowed, and by reason of prior claims but 100 feet can be taken on one side, the locator will not be restricted to less than 300 feet on the other side; and when the locator does not determine by exploration where the middle of the vein at the surface is, his discovery shaft must be assumed to mark such point.

11. By the foregoing it will be perceived that no lode claim located after the 10th May, 1872, can exceed a parallelogram fifteen hundred feet in length by six hundred feet in width, but whether surface ground of that width can be taken depends upon the local regulations or State or territorial laws in force in the several mining districts; and that no such local regulations or State or territorial laws shall limit a vein or lode claim to less than fifteen hundred feet along the course thereof, whether the location is made by one or more persons, nor can surface rights be limited to less than fifty feet in width, unless adverse claims existing on the 10th day of May, 1872, render such lateral limitations necessary.

12. It is provided by the Revised Statutes that the miners of each district may make rules and regulations, not in conflict with the laws of the United States or of the State or Territory in which such districts are respectively situated, governing the location, manner of recording, and amount of work necessary to hold possession of a claim. They likewise require that the location shall be so distinctly marked on the ground that its boundaries may be readily traced. This is a very important matter, and locators cannot exercise too much care in defining their locations at the outset, inasmuch as the

law requires that all records of mining locations made subsequent to May 10, 1872, shall contain the name or names of the locators, the date of the location, and such a description of the claim or claims located, by reference to some natural object or permanent monument, as will identify the claim.

13. The statutes provide that no lode claim shall be recorded until after the discovery of a vein or lode within the limits of the claim located, the object of which provision is evidently to prevent the appropriation of presumed mineral ground for speculative purposes to the exclusion of *bona fide* prospectors, before sufficient work has been done to determine whether a vein or lode really exists.

14. The claimant should, therefore, prior to locating his claim, unless the vein can be traced upon the surface, sink a shaft or run a tunnel or drift to a sufficient depth therein to discover and
332 develop a mineral-bearing vein, lode, or crevice; should determine, if possible, the general course of such vein in either direction from the point of discovery, by which direction he will be governed in marking the boundaries of his claim on the surface. His location notice should give the course and distance, as nearly as practicable, from the discovery shaft on the claim to some permanent, well-known points or objects, such, for instance, as stone monuments, blazed trees, the confluence of streams, point of intersection of well-known gulches, ravines, or roads, prominent buttes, hills, &c., which may be in the immediate vicinity, and which will serve to perpetuate and fix the *locus* of the claim and render it susceptible of identification from the description thereof given in the record of locations in the district, and should be duly recorded.

15. In addition to the foregoing data the claimant should state the names of adjoining claims, or, if none adjoin, the relative positions of the nearest claims; should drive a post or erect a monument of stones at each corner of his surface ground, and at the point of discovery or discovery shaft should fix a post, stake, or board, upon which should be designated the name of the lode, the name or names of the locators, the number of feet claimed, and in which direction from the point of discovery, it being essential that the location notice filed for record, in addition to the foregoing description, should state whether the entire claim of fifteen hundred feet is taken on one side of the point of discovery or whether it is partly upon one and partly upon the other side thereof, and in the latter case how many feet are claimed upon each side of such discovery point.

16. Within a reasonable time, say, twenty days after the location shall have been marked on the ground, or such time as is allowed by the local laws, notice thereof, accurately describing the claim in manner aforesaid, should be filed for record with the proper recorder of the district, who will thereupon issue the usual certificate of location.

17. In order to hold the possessory right to a location made since May 10, 1872, not less than one hundred dollars' worth of labor must be performed or improvements made thereon annually until entry shall have been made. Under the provisions of the act of

Congress approved January 22, 1880, the first annual expenditure becomes due and must be performed during the calendar year succeeding that in which the location was made. Expenditure made or labor performed prior to the first day of January succeeding the date of location will not be considered as a part of or applied upon the first annual expenditure required by law. Failure to make the expenditure or perform the labor required will subject the claim to relocation by any other party having the necessary qualifications, unless the original locator, his heirs, assigns, or legal representatives, have resumed work thereon after such failure and before such relocation.

18. The expenditures required upon mining claims may be made from the surface or in running a tunnel for the development of such claims, the act of February 11, 1875, providing that where a person or company has or may run a tunnel for the purpose of developing a lode or lodes owned by said person or company the money so expended in said tunnel shall be taken and considered as expended on said lode or lodes, and such person or company shall not be required to perform work on the surface of said lode or lodes in order to hold the same.

19. The importance of attending to these details in the matter of location, labor, and expenditure will be the more readily perceived when it is understood that a failure to give the subject proper attention may invalidate the claim.

333 Tunnel rights.

20. Section 2323 provides that where a tunnel is run for the development of a vein or lode or for the discovery of mines the owners of such tunnel shall have the right of possession of all veins or lodes within three thousand feet from the face of such tunnel on the line thereof, not previously known to exist, discovered in such tunnel, to the same extent as if discovered from the surface; and locations on the line of such tunnel of veins or lodes not appearing on the surface, made by other parties after the commencement of the tunnel and while the same is being prosecuted with reasonable diligence, shall be invalid; but failure to prosecute the work on the tunnel for six months shall be considered as an abandonment of the right to all undiscovered veins or lodes on the line of said tunnel.

21. The effect of this is simply to give the proprietors of a mining tunnel run in good faith the possessory right to fifteen hundred feet of any blind lodes cut, discovered, or intersected by such tunnel, which were not previously known to exist, within three thousand feet from the face or point of commencement of such tunnel, and to prohibit other parties, after the commencement of the tunnel, from prospecting for and making locations of lodes on the line thereof and within said distance of three thousand feet, unless such lodes appear upon the surface or were previously known to exist.

22. The term "face," as used in said section, is construed and held to mean the first working face formed in the tunnel, and to signify the point at which the tunnel actually enters cover, it being

from this point that the three thousand feet are to be counted upon which prospecting is prohibited as aforesaid.

23. To avail themselves of the benefits of this provision of law the proprietors of a mining tunnel will be required, at the time they enter cover as aforesaid, to give proper notice of their tunnel location by erecting a substantial post, board, or monument at the face or point of commencement thereof, upon which should be posted a good and sufficient notice, giving the names of the parties or company claiming the tunnel right, the actual or proposed course or direction of the tunnel, the height and width thereof, and the course and distance from such face or point of commencement to some permanent well-known objects in the vicinity by which to fix and determine the *locus* in manner heretofore set forth applicable to locations of veins or lodes, and at the time of posting such notice they shall, in order that miners or prospectors may be enabled to determine whether or not they are within the lines of the tunnel, establish the boundary lines thereof by stakes or monuments placed along such lines at proper intervals to the terminus of the three thousand feet from the face or point of commencement of the tunnel, and the lines so marked will define and govern as to the specific boundaries within which prospecting for lodes not previously known to exist is prohibited while work on the tunnel is being prosecuted with reasonable diligence.

24. At the time of posting notice and marking out the lines of the tunnel as aforesaid a full and correct copy of such notice of location defining the tunnel claim must be filed for record with the mining recorder of the district, to which notice must be attached the sworn statement or declaration of the owners, claimants, or projectors of such tunnel, setting forth the facts in the case, stating the amount expended by themselves and their predecessors in interest in prosecuting work thereon, the extent of the work per-
334 formed, and that it is *bona fide* their intention to prosecute work on the tunnel so located and described with reasonable diligence for the development of a vein or lode or for the discovery of mines or both, as the case may be. This notice of location must be duly recorded and, with the said sworn statement attached, kept on the recorder's files for future reference.

25. By a compliance with the foregoing much needless difficulty will be avoided, and the way for the adjustment of legal rights acquired in virtue of said section 2323 will be made much more easy and certain.

26. This office will take particular care that no improper advantage is taken of this provision of law by parties making or professing to make tunnel locations, ostensibly for the purposes named in the statute, but really for the purpose of monopolizing the lands lying in front of their tunnels to the detriment of the mining interests and to the exclusion of *bona fide* prospectors or miners, but will hold such tunnel claimants to a strict compliance with the terms of the statutes; and a reasonable diligence on their part in prosecuting the work is one of the essential conditions of their implied contract. Negligence or want of due diligence will be con-

strued as working a forfeiture of their right to all undiscovered veins on the line of such tunnel.

Manner of proceeding to obtain Government title to vein or lode claims.

27. By section 2325 authority is given for granting titles for mines by patent from the Government to any person, association, or corporation having the necessary qualifications as to citizenship and holding the right of possession to a claim in compliance with law.

28. The claimant is required in the first place to have a correct survey of his claim made under authority of the surveyor general of the State or Territory in which the claim lies; such survey to show with accuracy the exterior surface boundaries of the claim, which boundaries are required to be distinctly marked by monuments on the ground. Four plats and one copy of the original field-notes in each case will be prepared by the surveyor general; one plat and the original field-notes to be retained in the office of the surveyor general, one copy of the plat to be given the claimant for posting upon the claim, one plat and a copy of the field-notes to be given the claimant for filing with the proper register, to be finally transmitted by that officer, with others papers in the case, to this office, and one plat to be sent by the surveyor general to the register of the proper land district, to be retained on his files for future reference.

29. The claimant is then required to post a copy of the plat of such survey in a conspicuous place upon the claim, together with notice of his intention to apply for a patent therefor, which notice will give the date of posting, the name of the claimant, the name of the claim, mine, or lode; the mining district and county; whether the location is of record, and, if so, where the record may be found; the number of feet claimed along the vein and the presumed direction thereof; the number of feet claimed on the lode in each direction from the point of discovery or other well-defined place on the claim; the name or names of adjoining claimants on the same or other lodes, or, if none adjoin, the names of the nearest claimants, &c.

30. After posting the said plat and notice upon the premises the claimant will file with the proper register and receiver a copy of such plat and the field-notes of survey of the claim, accom-
335 panied by the affidavit of at least two credible witnesses that such plat and notice are posted conspicuously upon the claim, giving the date and place of such posting; a copy of the notice so posted to be attached to and form a part of said affidavit.

31. Attached to the field-notes so filed must be the sworn statement of the claimant that he has the possessory right to the premises therein described in virtue of a compliance by himself (and by his grantors, if he claims by purchase) with the mining rules, regulations, and customs of the mining district, State, or Territory in which the claim lies, and with the mining laws of Congress; such sworn statement to narrate briefly, but as clearly as possible, the facts constituting such compliance, the origin of his possession, and the basis of his claim to a patent.

32. This affidavit should be supported by appropriate evidence from the mining recorder's office as to his possessory right, as follows, viz: Where he claims to be a locator, a full, true, and correct copy of such location should be furnished, as the same appears upon the mining records; such copy to be attested by the seal of the recorder, or, if he has no seal, then he should make oath to the same being correct as shown by his records; where the applicant claims as a locator in company with others who have since conveyed their interests in the lode to him, a copy of the original record of location should be filed, together with an abstract of title from the proper recorder, under seal or oath as aforesaid, tracing the co-locator's possessory rights in the claim to such applicant for patent; where the applicant claims only as a purchaser for valuable consideration, a copy of the location record must be filed, under seal or upon oath as aforesaid, with an abstract of title certified as above by the proper recorder, tracing the right of possession by a continuous chain of conveyances from the original locators to the applicant; also certifying that no conveyances affecting the title to the claim in question appear of record in his office other than those set forth in the accompanying abstract.

33. In the event of the mining records in any case having been destroyed by fire or otherwise lost, affidavit of the fact should be made, and secondary evidence of possessory title will be received, which may consist of the affidavit of the claimant, supported by those of any other parties cognizant of the facts relative to his location, occupancy, possession, improvements, &c.; and in such case of lost records any deeds, certificates of location or purchase, or other evidence which may be in the claimant's possession and tend to establish his claim should be filed.

34. Upon the receipt of these papers the register will, at the expense of the claimant (who must furnish the agreement of the publisher to hold applicant for patent alone responsible for charges of publication), publish a notice of such application for the period of sixty days, in a newspaper published nearest to the claim, and will post a copy of such notice in his office for the same period. In all cases sixty days must intervene between the first and the last insertion of the notice in such newspaper. When the notice is published in a weekly newspaper ten consecutive insertions are necessary; when in a daily newspaper the notice must appear in each issue for the required period.

35. The notices so published and posted must be as full and complete as possible and embrace all the data given in the notice posted upon the claim.

36. Too much care cannot be exercised in the preparation
336 of these notices, inasmuch as upon their accuracy and completeness will depend, in a great measure, the regularity and validity of the whole proceeding.

37. The claimant, either at the time of filing these papers with the register or at any time during the sixty days' publication, is required to file a certificate of the surveyor general that not less than five hundred dollars' worth of labor has been expended or improve-

ments made upon the claim by the applicant or his grantors; that the plat filed by the claimant is correct; that the field-notes of the survey as filed furnish such an accurate description of the claim as will, if incorporated into a patent, serve to fully identify the premises, and that such reference is made therein to natural objects or permanent monuments as will perpetuate and fix the *locus* thereof.

38. It will be the more convenient way to have this certificate indorsed by the surveyor general, both upon the plat and field-notes of survey filed by the claimant as aforesaid.

39. After the sixty days' period of newspaper publication has expired the claimant will file his affidavit, showing that the plat and notice aforesaid remained conspicuously posted upon the claim sought to be patented during said sixty days' publication, giving the dates.

40. Upon the filing of this affidavit the register will, if no adverse claim was filed in his office during the period of publication, permit the claimant to pay for the land according to the area given in the plat and field-notes of survey aforesaid, at the rate of five dollars for each acre and five dollars for each fractional part of an acre, the receiver issuing the usual duplicate receipt therefor. The claimant will also make a sworn statement of all charges and fees paid by him for publication and surveys, together with all fees and money paid the register and receiver of the land office; after which the whole matter will be forwarded to the Commissioner of the General Land Office and a patent issued thereon if found regular.

41. In sending up the papers in the case the register must not omit certifying to the fact that the notice was posted in his office for the full period of sixty days, such certificate to state distinctly when such posting was done and how long continued.

42. The consecutive series of numbers of mineral entries must be continued, whether the same are of lode or placer claims.

43. The surveyor general must continue to designate all surveyed mineral claims as heretofore by a progressive series of numbers, beginning with lot No. 37 in each township; the claim to be so designated at date of filing the plat, field-notes, &c., in addition to the local designation of the claim, it being required in all cases that the plat and field-notes of the survey of a claim must, in addition to the reference to permanent objects in the neighborhood, describe the *locus* of the claim with reference to the lines of public surveys by a line connecting a corner of the claim with the nearest public corner of the United States surveys, unless such claim be on unsurveyed lands at a remote distance from such public corner, in which latter case the reference by course and distance to permanent objects in the neighborhood will be a sufficient designation by which to fix the *locus* until the public surveys shall have been closed upon its boundaries.

Adverse claims.

44. Section 2326 provides for adverse claims, fixes the time within which they shall be filed to have legal effect, and prescribes the manner of their adjustment.

337 45. Said section requires that the adverse claim shall be filed during the period of publication of notice; that it must be on the oath of the adverse claimant, and that it must show the "nature," the "boundaries," and the "extent" of the adverse claim.

46. In order that this section of law may be properly carried into effect the following is communicated for the information of all concerned:

47. An adverse mining claim must be filed with the register of the same land office with whom the application for patent was filed, or, in his absence, with the receiver, and within the sixty days' period of newspaper publication of notice.

48. The adverse notice must be duly sworn to by the person or persons making the same before an officer authorized to administer oaths within the land district or before the register or receiver. It will fully set forth the nature and extent of the interference or conflict; whether the adverse party claims as a purchaser for valuable consideration or as a locator; if the former, a certified copy of the original location, the original conveyance, a duly certified copy thereof, or an abstract of title from the office of the proper recorder should be furnished, or if the transaction was a mere verbal one he will narrate the circumstances attending the purchase, the date thereof, and the amount paid, which facts should be supported by the affidavit of one or more witnesses, if any were present at the time, and if he claims as a locator he must file a duly certified copy of the location from the office of the proper recorder.

49. In order that the "boundaries" and "extent" of the claim may be shown it will be incumbent upon the adverse claimant to file a plat showing his entire claim, its relative situation or position with the one against which he claims, and the extent of the conflict. This plat must be made from an actual survey by a United States deputy surveyor, who will officially certify thereon to its correctness; and in addition there must be attached to such plat of survey a certificate or sworn statement by the surveyor as to the approximate value of the labor performed or improvements made upon the claim by the adverse party or his predecessors in interest, and the plat must indicate the position of any shafts, tunnels, or other improvements, if any such exist, upon the claim of the party opposing the application, and by which party said improvements were made.

50. Upon the foregoing being filed within the sixty days as aforesaid, the register, or, in his absence, the receiver, will give notice in writing to both parties to the contest that such adverse claim has been filed, informing them that the party who filed the adverse claim will be required within thirty days from the date of such filing to commence proceedings in a court of competent jurisdiction to determine the question of right of possession, and to prosecute the same with reasonable diligence to final judgment, and that should such adverse claimant fail to do so his adverse claim will be considered waived and the application for patent be allowed to proceed upon its merits.

51. When an adverse claim is filed as aforesaid the register or receiver will endorse upon the same the precise date of filing and

preserve a record of the date of notifications issued thereon, and thereafter all proceedings on the application for patent will be suspended, with the exception of the completion of the publication and posting of notices and plat and the filing of the necessary proof thereof, until the controversy shall have been adjudicated in court or the adverse claim waived or withdrawn.

338 52. The proceedings after rendition of judgment by the court in such case are so clearly defined by the act itself as to render it unnecessary to enlarge thereon in this place.

53. The proceedings to obtain patents for claims usually called placers, including all forms of deposit, are similar to the proceedings prescribed for obtaining patents for vein or lode claims; but where said placer claim shall be upon surveyed lands and conform to legal subdivisions no further survey or plat will be required, and all placer mining claims located after May 10, 1872, shall conform as nearly as practicable with the United States system of public land surveys and the rectangular subdivisions of such surveys, and no such location shall include more than twenty acres for each individual claimant; but where placer claims cannot be conformed to legal subdivisions survey and plat shall be made as on unsurveyed lands; but where such claims are located previous to the public surveys and do not conform to legal subdivisions survey, plat, and entry thereof may be made according to the boundaries thereof, provided the location is in all respects legal.

54. The proceedings for obtaining patents for veins or lodes having already been fully given, it will not be necessary to repeat them here, it being thought that careful attention thereto by applicants and the local officers will enable them to act understandingly in the matter and make such slight modifications in the notice or otherwise as may be necessary in view of the different nature of the two classes of claims, placer claims being fixed, however, at two dollars and fifty cents per acre or fractional part of an acre.

55. By section 2330 authority is given for the subdivision of forty-acre legal subdivisions into ten-acre lots, which is intended for the greater convenience of miners in segregating their claims both from one another and from intervening agricultural lands.

56. It is held, therefore, that under a proper construction of the law these ten-acre lots in mining districts should be considered and dealt with, to all intents and purposes, as legal subdivisions, and that an applicant having a legal claim which conforms to one or more of these ten-acre lots, either adjoining or cornering, may make entry thereof after the usual proceedings without further survey or plat.

57. In cases of this kind, however, the notice given of the application must be very specific and accurate in description, and as the forty-acre tracts may be subdivided into ten-acre lots, either in the form of squares of ten by ten chains or of parallelograms five by twenty chains, so long as the lines are parallel and at right angles with the lines of the public surveys, it will be necessary that the notice and application state specifically what ten-acre lots are sought to be patented, in addition to the other data required in the notice.

58. Where the ten-acre subdivision is in the form of a square it

may be described, for instance, as the "S. E. ¼ of the S. W. ¼ of N. W. ¼," or, if in the form of a parallelogram as aforesaid, it may be described as the "W. ½ of the W. ½ of the S. W. ¼ of the N. W. ¼ (or the N. ½ of the S. ½ of the N. E. ¼ of the S. E. ¼) of section —, township —, range —," as the case may be; but, in addition to this description of the land, the notice must give all the other data that is required in a mineral application, by which parties may be put on inquiry as to the premises sought to be patented. The proof submitted with applications for claims of this kind must show clearly the character and the extent of the improvements upon the premises.

Inasmuch as the surveyor general has no duty to perform in connection with the entry of a placer claim of legal subdivisions,
339 the proof of improvements must show their value to be not less than five hundred dollars, and that they were made by the applicant for patent or his grantors.

59. Applicants for patent to a placer claim, who are also in possession of a known vein or lode included therein, must state in their application that the placer includes such vein or lode. The published and posted notices must also include such statement, and the vein or lode must be surveyed and marked upon the plat, the field-notes and plat giving the area of the lode claim or claims and the area of the placer separately. If veins or lodes lying within a placer location are owned by other parties the fact should be distinctly stated in the application for patent and in all the notices. It should be remembered that an application which omits to include an application for a known vein or lode therein must be construed as a conclusive declaration that the applicant has no right of possession to the vein or lode. Where there is no known lode or vein the fact must appear by the affidavit of claimant and one or more witnesses.

60. When an adverse claim is filed to a placer application the proceedings are the same as in the case of vein or lode claims, already described.

Quantity of placer ground subject to location.

61. By section 2330 it is declared that no location of a placer claim made after July 9, 1870, shall exceed one hundred and sixty acres for any one person or association of persons, which location shall conform to the United States surveys.

62. Section 2331 provides that all placer mining claims located after May 10, 1872, shall conform as nearly as practicable with the United States system of public surveys and the subdivisions of such surveys, and no such locations shall include more than twenty acres for each individual claimant.

63. The foregoing provisions of law are construed to mean that after the 9th day of July, 1870, no location of a placer claim can be made to exceed one hundred and sixty acres, whatever may be the number of locators associated together or whatever the local regulations of the district may allow; and that from and after May 10, 1872, no location made by an individual can exceed twenty acres and no location made by an association of individuals can exceed

one hundred and sixty acres, which location of one hundred and sixty acres cannot be made by a less number than eight *bona fide* locators, and no local laws or mining regulations can restrict a placer location to less than twenty acres, although the locator is not compelled to take so much.

64. The regulations hereinbefore given as to the manner of marking locations on the ground and placing the same on record must be observed in the case of placer locations, so far as the same are applicable, the law requiring, however, that where placer claims are upon surveyed public lands the locations must hereafter be made to conform to legal subdivisions thereof as near as practicable.

65. With regard to the proofs necessary to establish the possessory right to a placer claim, section 2332 provides that "where such person or association, they and their grantors, have held and worked their claims for a period equal to the time prescribed by the statute of limitations for mining claims of the State or Territory where the same may be situated, evidence of such possession and working of the claims for such period shall be sufficient to establish a right to a patent thereto under this chapter, in the absence of any adverse claim."

340 66. This provision of law will greatly lessen the burden of proof, more especially in the case of old claims located many years since, the records of which, in many cases, have been destroyed by fire or lost in other ways during the lapse of time, but concerning the possessory right to which all controversy or litigation has long been settled.

67. When an applicant desires to make his proof of possessory right in accordance with this provision of law you will not require him to produce evidence of location, copies of conveyances, or abstracts of title, as in other cases, but will require him to furnish a duly certified copy of the statute of limitations of mining claims for the State or Territory, together with his sworn statement giving a clear and succinct narration of the facts as to the origin of his title, and likewise as to the continuation of his possession of the mining ground covered by his application; the area thereof, the nature and extent of the mining that has been done thereon; whether there has been any opposition to his possession or litigation with regard to his claim, and, if so, when the same ceased; whether such cessation was caused by compromise or by judicial decree, and any additional facts within the claimant's knowledge having a direct bearing upon his possession and *bona fides* which he may desire to submit in support of his claim.

68. There should likewise be filed a certificate, under seal of the court having jurisdiction of mining cases within the judicial district embracing the claim, that no suit or action of any character whatever involving the right of possession to any portion of the claim applied for is pending, and that there has been no litigation before said court affecting the title to said claim or any part thereof for a period equal to the time fixed by the statute of limitations for mining claims in the State or Territory as aforesaid, other than that which has been finally decided in favor of the claimant.

69. The claimant should support his narrative of facts relative to his possession, occupancy, and improvements by corroborative testimony of any disinterested person or persons of credibility who may be cognizant of the facts in the case and are capable of testifying understandingly in the premises.

70. It will be to the advantage of claimants to make their proofs as full and complete as practicable.

Mill sites.

71. Section 2337 provides that "where non-mineral land not contiguous to the vein or lode is used or occupied by the proprietor of such vein or lode for mining or milling purposes, such non-adjacent surface ground may be embraced and included in an application for a patent for such vein or lode, and the same may be patented therewith, subject to the same preliminary requirements as to survey and notice as are applicable to veins or lodes; but no location hereafter made of such non-adjacent land shall exceed five acres, and payment for the same must be made at the same rate as fixed by this chapter for the superficies of the lode. The owner of a quartz mill or reduction works, not owning a mine in connection therewith, may also receive a patent for his mill site, as provided in this section."

72. To avail themselves of this provision of law, parties holding the possessory right to a vein or lode and to a piece of non-mineral land not contiguous thereto for mining or milling purposes, not exceeding the quantity allowed for such purpose by section 2337 United States Revised Statutes or prior laws under which the land was appropriated—the proprietors of such vein or lode may file in the proper land office their application for a patent, under oath,
341 in manner already set forth herein, which application, together with the plat and field-notes, may include, embrace, and describe, in addition to the vein or lode, such non-contiguous mill site, and after due proceedings as to notice, &c., a patent will be issued conveying the same as one claim.

73. In making the survey in a case of this kind the lode claim should be described in the plat and field-notes as "lot No. 37 A," and the mill site as "lot No. 37 B," or whatever may be its appropriate numerical designation; the course and distance from a corner of the mill site to a corner of the lode claim to be invariably given in such plat and field-notes, and a copy of the plat and notice of application for patent must be conspicuously posted upon the mill site, as well as upon the vein or lode, for the statutory period of sixty days. In making the entry no separate receipt or certificate need be issued for the mill site, but the whole area of both lode and mill site will be embraced in one entry, the price being five dollars for each acre and fractional part of an acre embraced by such lode and mill-site claim.

74. In case the owner of a quartz mill or reduction works is not the owner or claimant of a vein or lode the law permits him to make application therefor in the same manner prescribed herein for mining claims, and, after due notice and proceedings, in the absence of a

valid adverse filing, to enter and receive a patent for his mill site at said price per acre.

75. In every case there must be satisfactory proof that the land claimed as a mill site is not mineral in character, which proof may, where the matter is unquestioned, consist of the sworn statement of the claimant, supported by that of one or more disinterested persons capable from acquaintance with the land to testify understandingly.

76. The law expressly limits the mill-site locations made from and after its passage to five acres.

77. The registers and receivers will preserve an unbroken consecutive series of numbers for all mineral entries.

Proof of citizenship of mining claimants.

78. The proof necessary to establish the citizenship of applicants for mining patents must be made in the following manner: In case of an incorporated company, a certified copy of their charter or certificate of incorporation must be filed. In case of an association of persons unincorporated, the affidavit of their duly authorized agent, made upon his own knowledge or upon information and belief, setting forth the residence of each person forming such association, must be submitted. This affidavit must be accompanied by a power of attorney from the parties forming such association authorizing the person who makes the affidavit of citizenship to act for them in the matter of their application for patent.

79. In case of an individual or an association of individuals who do not appear by their duly authorized agent you will require the affidavit of each applicant, showing whether he is a native or naturalized citizen, when and where born, and his residence.

80. In case an applicant has declared his intention to become a citizen or has been naturalized his affidavit must show the date, place, and the court before which he declared his intention or from which his certificate of citizenship issued and present residence.

81. The affidavit of the claimant as to his citizenship may be taken before the register or receiver or any other officer authorized to administer oaths within the land district. If citizenship is established by the testimony of disinterested persons, such testi-
342 mony may be taken at any place before any person authorized to administer oaths and whose official character is duly verified.

Appointment of deputy surveyors of mining claims, charges for surveys and publications, fees of registers and receivers, &c.

82. Section 2334 provides for the appointment of surveyors of mineral claims; authorizes the Commissioner of the General Land Office to establish the rates to be charged for surveys and for newspaper publications; prescribes the fees allowed to the local officers for receiving and acting upon applications for mining patents and for adverse claims thereto, &c.

Under this authority of law the following rates have been estab-

lished as the maximum charges for newspaper publications in mining cases:

a. Where a daily newspaper is designated the charge shall not exceed seven dollars for each ten lines of space occupied, and where a weekly newspaper is designated as the medium of publication five dollars for the same space will be allowed. Such charge shall be accepted as full payment for publication in each issue of the newspaper for the entire period required by law.

It is expected that these notices shall not be so abbreviated as to curtail the description essential to a perfect notice, and the said rates established upon the understanding that they are to be in the usual body type used for advertisements.

b. For the publication of citations in contests or hearings involving the character of lands the charges shall not exceed eight dollars for five publications in weekly newspapers or ten dollars for publications in daily newspapers for thirty days.

83. The surveyors general of the several district will, in pursuance of said law, appoint in each land district as many competent deputies for the survey of mining claims as may seek such appointment, it being distinctly understood that all expenses of these notices and surveys are to be borne by the mining claimants and not by the United States, the system of making deposits for mineral surveys, as required by previous instructions, being hereby revoked as regards field-work, the claimant having the option of employing any deputy surveyor within such district to do his work in the field.

84. With regard to the platting of the claim and other office-work in the surveyor general's office, that officer will make an estimate of the cost thereof, which amount the claimant will deposit with any assistant United States treasurer or designated depository in favor of the United States Treasurer, to be passed to the credit of the fund created by "individual depositors for surveys of the public lands," and file with the surveyor general duplicate certificate of such deposit in the usual manner.

85. The surveyors general will endeavor to appoint mineral deputy surveyors, so that one or more may be located in each mining district for the greater convenience of miners.

86. The usual oaths will be required of these deputies and their assistants as to the correctness of each survey executed by them.

The duty of the deputy mineral surveyor ceases when he has executed the survey and returned the field-notes and preliminary plat thereof with his report to the surveyor general. He will not be allowed to prepare for the mining claimant the papers in support of an application for patent or otherwise perform the duties of an attorney before the land office in connection with a mining claim.

343 The surveyors general and local land officers are expected to report any infringement of this regulation to this office.

87. The law requires that each applicant shall file with the register and receiver a sworn statement of all charges and fees paid by him for publication of notice and for survey, together with all fees and money paid the register and receiver, which sworn statement is

required to be transmitted to this office for the information of the Commissioner.

88. Should it appear that excessive or exorbitant charges have been made by any surveyor or any publisher, prompt action will be taken with the view of correcting the abuse.

89. The fees payable to the register and receiver for filing and acting upon applications for mineral-land patents are five dollars to each officer, to be paid by the applicant for patent at the time of filing, and the like sum of five dollars is payable to each officer by an adverse claimant at the time of filing his adverse claim.

90. All fees or charges under this law may be paid in United States currency.

91. The register and receiver will, at the close of each month, forward to this office an abstract of mining applications filed and a register of receipts, accompanied with an abstract of mineral lands sold and an abstract of adverse claims filed.

92. The fees and purchase-money received by registers and receivers must be placed to the credit of the United States in the receiver's monthly and quarterly account, charging up in the disbursing account the sums to which the register and receiver may be respectively entitled as fees and commissions, with limitations in regard to the legal maximum.

Hearings to establish the character of lands.

93. In every case where it becomes necessary under the law and existing instructions of this office that a hearing be held and testimony taken for the purpose of ascertaining the mineral or agricultural character of land, the local officers are directed to cause the evidence to be taken before a duly qualified officer whose office is located nearest the land in dispute, the distance to be computed by ordinary routes of travel.

Whenever the local office comes within this rule the hearing will be held before the register and receiver.

It is intended to cause these hearings to be held, as far as practicable, in such manner as to afford the least inconvenience to persons interested. Should it appear, therefore, by written stipulation of all the parties that this purpose will best be subserved by the designation of any particular officer authorized to administer oaths within the land district in which the land in controversy is situated, the instructions herein may be departed from in accordance with such stipulation. Such deviation may also be allowed where the officer who would otherwise be designated is an interested party or where for other good reason his selection would be improper.

When the evidence is taken before an officer other than the register and receiver the record should be sealed up, the title of the case indorsed on the envelope, and the whole returned by mail or express to the register and receiver.

On the 27th April, 1880, in accordance with the directions of the Secretary of the Interior, this office revoked the withdrawals theretofore made upon general information that vast tracts of public land were mineral in character and instructed the local officers in

the absence of a specific allegation of the mineral character of land to allow applications for agricultural entry thereof upon due proof.

344 Hereafter the only tracts of public land that will be withheld from entry as agricultural land on account of its mineral character will be such as are returned by the surveyor general as mineral, and even the presumption which is supported by such return may be overcome by testimony taken at a regular hearing.

94. Hearings to determine the character of land, as practically distinguished, are of two kinds:

1st. Where lands which are sought to be entered and patented as agricultural are alleged by affidavit to be mineral, or when sought as mineral their non-mineral character is alleged.

The proceedings relative to this class are in the nature of a contest between two or more known parties, and the testimony may be taken on personal notice of at least ten days, duly served on all parties, or if they cannot be found, then by publication for thirty days in a newspaper of general circulation, to be designated by the register of the land office as published nearest to the land in controversy. If publication is made in a weekly newspaper the notice must be inserted in five consecutive weekly issues thereof.

2d. When lands are returned as mineral by the surveyor general. When such lands are sought to be entered as agricultural notice must be given by publication for thirty days as aforesaid.

95. All notices must describe the land, give the name and address of the claimant, the character of his claim, and the time, place, and purpose of the hearing.

Proof of service of notice, when personal, must consist of either acknowledgment of service indorsed on the citation (which is always desirable) or the affidavit of the party serving the same, giving date, place, and manner of service, indorsed as aforesaid.

Proof of publication must be the affidavit of the publisher of the newspaper, stating the period of publication, giving dates, stating whether in a daily or weekly issue, and a copy of the notice so published must be attached to and form a part of the affidavit.

Proof of posting on the claim must be made by the affidavits of two or more persons who state when and where the notice was posted; that it remained so posted during the prescribed period, giving dates, and a copy of the notice so posted must be attached to and made a part of the affidavits.

Proof of notice is indispensable to the regularity of proceedings and must accompany the record in every case.

The expense of notice must in every case be paid by the parties thereto.

96. At the hearing there must be filed the affidavit of the publisher of the paper that the said notice was published for the required time, stating when and for how long such publication was made, a printed copy thereof to be attached and made a part of the affidavit.

97. At the hearing the claimants and witnesses will be thoroughly examined with regard to the character of the land; whether the

same has been thoroughly prospected; whether or not there exists within the tract or tracts claimed any lode or vein of quartz or other rock in place bearing gold, silver, cinnabar, lead, tin, or copper or other valuable deposit which has ever been claimed, located, recorded, or worked; whether such work is entirely abandoned or whether occasionally resumed; if such lode does exist, by whom claimed, under what designation, and in which subdivision of the land it lies; whether any placer mine or mines exist upon the land;
345 if so, what is the character thereof—whether of the shallow-surface description or of the deep cement, blue lead, or gravel deposits; to what extent mining is carried on when water can be obtained, and what the facilities are for obtaining water for mining purposes; upon what particular ten-acre subdivisions mining has been done, and at what time the land was abandoned for mining purposes, if abandoned at all.

98. The testimony should also show the agricultural capacities of the land, what kind of crops are raised thereon, and the value thereof; the number of acres actually cultivated for crops of cereals or vegetables, and within which particular ten-acre subdivision such crops are raised; also which of these subdivisions embrace his improvements, giving in detail the extent and value of his improvements, such as house, barn, vineyard, orchard, fencing, etc.

99. It is thought that *bona fide* settlers upon lands really agricultural will be able to show, by a clear, logical, and succinct chain of evidence, that their claims are founded upon law and justice, while parties who have made little or no permanent agricultural improvements and who only seek title for speculative purposes, on account of the mineral deposits known to themselves to be contained in the land, will be defeated in their intentions.

100. The testimony should be as full and complete as possible; and, in addition to the leading points indicated above, everything of importance bearing upon the question of the character of the land should be elicited at the hearing.

101. Where the testimony is taken before an officer who does not use a seal, other than the register and receiver, the official character of such officer must be attested by a clerk of a court of record, and the testimony transmitted to the register and receiver, who will thereupon examine and forward the same to this office with their joint opinion as to the character of the land as shown by the testimony.

102. When the case comes before this office such an award of the land will be made as the law and the facts may justify; and in cases where a survey is necessary to set apart the mineral from the agricultural land in any forty-acre tract the necessary instructions will be issued to enable the agricultural claimant, at his own expense, to have the work done, at his option, either by United States deputy, county, or other local surveyor; the survey in such case may be executed in such manner as will segregate the portion of land actually containing the mine and used as surfaced ground for the convenient working thereof from the remainder of the tract, which remainder will be patented to the agriculturist to whom the same may have

been awarded, subject, however, to the condition that the land may be entered upon by the proprietor of any vein or lode for which a patent has been issued by the United States for the purpose of extracting and removing the ore from the same where found to penetrate or intersect the land so patented as agricultural, as stipulated by the mining act.

103. Such survey when executed must be properly sworn to by the surveyor, either before a notary public, officer of a court of record, or before the register or receiver, the deponent's character and credibility to be properly certified to by the officer administering the oath.

104. Upon the filing of the plat and field-notes of such survey, duly sworn to as aforesaid, you will transmit the same to the surveyor general for his verification and approval, who, if he finds the work correctly performed, will properly mark out the same upon the original township plat in his office, and furnish authenticated copies of such plat and description both to the proper local land office and to this office, to be affixed to the duplicate and triplicate township plats respectively.

346 105. In cases where a portion of a forty-acre tract is awarded to an agricultural claimant and he causes the segregation thereof from the mineral portion as aforesaid, such agricultural portion will not be given a numerical designation as in the case of surveyed mineral claims, but will simply be described as the "fractional — quarter of the — quarter of section —, in township —, of range —, meridian, containing — acres, the same being exclusive of the land adjudged to be mineral in said forty-acre tract."

106. The surveyor must correctly compute the area of such agricultural portion, which computation will be verified by the surveyor general.

107. After the authenticated plat and field-notes of the survey have been received from the surveyor general this office will issue the necessary order for the entry of the land, and in issuing the receiver's receipt and register's patent certificate you will invariably be governed by the description of the land given in the order from this office.

108. The fees for taking testimony and reducing the same to writing in these cases will have to be defrayed by the parties in interest. Where such testimony is taken before any other officer than the register and receiver, the register and receiver will be entitled to no fees.

109. If, upon a review of the testimony at this office, a ten-acre tract should be found to be properly mineral in character, that fact will be no bar to the execution of the settler's legal right to the remaining non-mineral portion of his claim, if contiguous.

110. No fear need be entertained that miners will be permitted to make entries of tracts ostensibly as mining claims, which are not mineral, simply for the purpose of obtaining possession and defrauding settlers out of their valuable agricultural improvements, it being almost an impossibility for such a fraud to be consummated

under the laws and regulations applicable to obtaining patents for mining claims.

111. The fact that a certain tract of land is decided upon testimony to be mineral in character is by no means equivalent to an award of the land to a miner. A miner is compelled by law to give sixty days' publication of notice, and posting of diagrams and notices as a preliminary step; and then, before he can enter the land, he must show that the land yields mineral; that he is entitled to the possessory right thereto in virtue of compliance with local customs or rules of miners or by virtue of the statute of limitations; that he or his grantors have expended in actual labor and improvements an amount of not less than five hundred dollars thereon, and that the claim is one in regard to which there is no controversy or opposing claim. After all these proofs are met he is entitled to have a survey made at his own cost where a survey is required, after which he can enter and pay for the land embraced by his claim.

112. Blank forms for proofs in mineral cases are not furnished by the General Land Office.

Respectfully,

N. C. McFARLAND,
Commissioner.

DEPARTMENT OF INTERIOR, *October* 31, 1881.

Approved.

S. J. KIRKWOOD, *Secretary.*

347

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,
WASHINGTON, D. C., *April* 27, 1880.

Registers and receivers, U. S. district land offices:

GENTLEMEN: Your attention is directed to the following copy of letter from the Hon. Secretary of the Interior:

"DEPARTMENT OF THE INTERIOR,
"WASHINGTON, *April* 22, 1880.

"SIR: I have received your letter of the 16th instant, calling my attention to the withdrawals heretofore made of mineral lands under the direction of my predecessor, Hon. C. Delano, and setting forth at length the difficulties which arise in the adjustment of homestead and pre-emption claims on account of said withdrawals, and recommending in view of such difficulties that the 'present policy and practice of throwing the burden of proof upon agricultural claimants be reversed; that the applicant for such entry be required to make the non-mineral affidavit required as aforesaid, and that this be deemed sufficient in absence of the alleged mineral character of his claim; that if a party does allege in proper form that the land is valuable for minerals he should be required to affirmatively prove the fact, instead of in every case, with or without such allegation, requiring every settler to prove an expensive negative.'

"You further recommend 'that the withdrawals heretofore made as aforesaid be revoked, in order to remove the restriction upon *bona*

fide agricultural settlements, and to place such lands in a condition where they can be occupied, purchased, and developed.'

"I have carefully considered the recommendations made by you for the reasons stated, and have to say that they meet my approval.

"You are therefore instructed to so modify the instructions of your office as to conform to said recommendations, and you are also instructed to revoke the orders of withdrawals mentioned by you, in order that the restrictions thereby made upon agricultural settlements of the lands may be removed.

"Very respectfully, C. SCHURZ, *Secretary.*

"The Commissioner of the General Land Office."

The recommendations to the Hon. Secretary, upon which his said approval was based, are, in brief and in substance, that immense tracts of land are now and for several years last past have been officially designated as mineral lands; that as a matter of fact but an exceedingly small part of this entire area is valuable for minerals, but is good agricultural land; that these withdrawn lands are sub-
348 ject to entry under the homestead, pre-emption, and other laws providing for the sale of agricultural lands only after a hearing in every case wherein the burden of proof lies upon the agricultural applicant to establish that the tract claimed is non-mineral; that it is thus rendered exceedingly easy to cause such applicant great expense, delay, and vexation; that the expense, embarrassment, and delay actually incident to the course hitherto pursued operate to discourage and prevent settlements on such lands; that the timber on these lands is being largely taken on the claim that they are mineral lands, and that the vast tracts so designated and which are capable of supporting many thousands of settlers, adding largely to the productions of the country and contributing to its better progress, are not only for the most part practically reserved from sale under any law, but, being so secluded, it becomes easier for a party to fraudulently enter as agricultural a tract which he may discover to be valuable for minerals than for a *bona fide* settler to secure patent for agricultural land. All of such withdrawals heretofore made of lands in your district are hereby revoked, and when any party applies to enter any tract under any of the laws relating to agricultural lands he will be required to make the usual non-mineral affidavit, which, in the absence of any allegation that the land is mineral, will be deemed sufficient. Should affidavits be filed with you properly alleging any tract sought to be entered as aforesaid to be mineral, you will, after due notice, hold a hearing to determine the facts. In such cases the burden of proof will rest upon the party who alleges the land to be valuable for minerals, and he must affirmatively prove his allegations.

It is expected that you will exercise all possible prudence and care in respect to this matter and endeavor to carefully and conscientiously maintain and advance the purpose of the Department and this office, to wit, to enable the public lands which are in fact agricultural to be occupied and purchased without oppressive con-

ditions and to prevent lands which are in fact valuable for minerals from being taken except under the special laws applicable thereto.

Very respectfully, J. A. WILLIAMSON,
Commissioner.

349

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,
WASHINGTON, D. C., *Sept.* 23*d*, 1880.

Registers and receivers, United States district land offices:

GENTLEMEN: Hereafter, in case of application being made in your office to enter or select as agricultural land under any act of Congress other than the pre-emption or homestead acts lands returned as mineral by the surveyor general, you will require the applicant, at date of final proof, location, or selection, to publish for thirty days a notice describing the land applied for and giving time and place when such proof will be submitted or selection tendered. You will also post in your office a copy of the notice for the same period.

Proof of publication will consist of the affidavit of the publisher of the newspaper in which the notice was published, and you will furnish your own certificate as to posting in your office.

The revocation of the withdrawals of lands as mineral by circular of April 27, 1880, was made not only because said with-
350 drawals had in many instances worked great hardship to settlers, but because it is required by law that homestead and pre-emption claimants shall publish notices of their intention to make final proof on their entries, and this was thought to afford sufficient protection to all parties; but in case of entries under other laws there is no such notice required. This proceedure will apply to cases of application to enter under the town-site, desert-land, and timber-culture laws, applications to select lands under grants to States, railroad and wagon-road companies, and the location of the various classes of scrip upon lands which have been returned by the surveyor general as mineral in character.

Where, after such publication of notice has been regularly made, no affidavits alleging the mineral character of the land have been filed with you, you will allow the entry, selection, or location upon the filing of a proper non-mineral affidavit. If such mineral affi-
davits shall have been filed, you will proceed with a hearing,
351 as directed by the circular of April 27, 1880.

Acknowledge receipt hereof.

Very respectfully, J. A. WILLIAMSON,
Commissioner.

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,
WASHINGTON, D. C., *May* 9, 1882.

To registers and receivers, U. S. district land offices.

GENTLEMEN: Your attention is directed to the provisions of the following act of Congress, approved April 26, 1882:

An act to amend section twenty-three hundred and twenty-six of the Revised Statutes, in regard to mineral lands, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled—

That the adverse claim required by section twenty-three hundred and twenty-six of the Revised Statutes may be verified by the oath of any duly authorized agent or attorney-in-fact of the ad-
352 verse claimant cognizant of the facts stated, and the adverse claimant, if residing or at the time being beyond the limits of the district wherein the claim is situated, may make oath to the adverse claim before the clerk of any court of record of the United States or the State or Territory where the adverse claimant may then be or before any notary public of such State or Territory.

SEC. 2. That applicants for mineral patents, if residing beyond the limits of the district wherein the claim is situated, may make any oath or affidavit required for proof of citizenship before the clerk of any court of record or before any notary public of any State or Territory.

1. It will be observed that the act is not retroactive, and hence cannot affect proceedings had prior to its approval. Where citizenship, however, has not been proven it may be established as provided by section two of this act.

2. Where an agent or attorney-in-fact verifies the adverse claim he must distinctly swear that he is such agent or attorney, and accompany his affidavit by proof thereof.

353 3. The agent or attorney-in-fact must make the affidavit in verification of the adverse claim within the land district where the claim is situated.

Very respectfully, N. C. McFARLAND,
Commissioner.

DEPARTMENT OF THE INTERIOR, *May* 26, 1882.

Approved.

H. M. TELLER, *Secretary.*

354 N. DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,
WASHINGTON, D. C., *September* 22, 1882.

To registers and receivers and surveyors general.

GENTLEMEN: The following regulations are promulgated as amendatory of circular of October 31, 1881, entitled "United States Mining Laws and Regulations Thereunder," and have special reference to applications for patents to placer claims. They are to be considered in connection with paragraphs 53 to 60 of regulations contained in said circular:

1. The first care in recognizing an application for patent upon a placer claim must be exercised in determining the exact classification of the lands. To this end the clearest evidence of which the case is capable should be presented. If the claim be all placer

ground that fact must be stated in the application and corroborated by accompanying proofs. If of mixed placers and lodes it should be so set out, with a description of all known lodes situated within the boundaries of the claim. A specific declaration, such as is required by section 2333, Revised Statutes, must be furnished as to each lode intended to be claimed. All other known lodes are, by the silence of the applicant, excluded by law from all claim by him, of whatsoever nature, possessory or otherwise.

2. Section 2395, Revised Statutes (subdivision 7), requires the surveyor to "note in his field books the true situation of all mines, salt licks, salt springs, and mill seats which come to his knowledge;" also "all water-courses over which the lines he runs may pass." It further requires him to "note the quality of the lands." These descriptive notes are required by subdivision 8 to be incorporated in the plat by the surveyor general.

3. If these duties have been performed the surveys will furnish a reasonable guide to the district officers and to claimants in prosecuting their applications; but experience has shown that great neglect has resulted from inattention to the law in this respect, and the regular plats are of very little value in the matter. It will, therefore, be required in the future that deputy surveyors shall at the expense of the parties, make full examination of all placer claims and duly note the facts as specified in the law, stating the quality and composition of the soil, the kind and amount of timber and other vegetation, the *locus* and size of streams, and such
355 other matters as may appear upon the surface of the claims. This examination should include the character and extent of all surface and underground workings, whether placer or lode, for mining purposes.

4. In addition to these data, which the law requires to be shown in all cases, the deputy should report with reference to the proximity of centers of trade or residence; also of well-known systems of lode deposit or of individual lodes. He should also report as to the use or adaptability of the claim for placer mining; whether water has been brought upon it in sufficient quantity to mine the same or whether it can be procured for that purpose; and, finally, what works or expenditures have been made by the claimant or his grantors for the development of the claim and their situation and location with respect to the same as applied for.

5. This examination should be reported by the deputy under oath to the surveyor general and duly corroborated, and a copy of the same should be furnished with the application for patent to the claim, constituting a part thereof and included in the oath of the applicant.

6. In case of a proposed claim for lands not yet surveyed the foregoing regulations will govern the application for survey.

7. In controversies hereafter to be determined respecting the mineral value of lands, their value for all purposes, whether agricultural or municipal or as seats for towns, will be considered without reference to the decisions heretofore made in particular cases. No

decision finally executed, however, will be reconsidered under this modification.

8. No application by an association of persons for patent to a placer claim will be allowed to embrace more than one hundred and sixty acres, nor will any application be entertained that embraces more than one location.

9. Applications awaiting entry, whether published or not, must be made to conform to these regulations, both with respect to amount of ground and examination as to the character of the land. Entries already made will be suspended for examination by the Commissioner, and such additional proofs as may be deemed necessary in each case will be demanded.

Very respectfully, N. C. McFARLAND,
Commissioner.

Department of the Interior, Sept. 23, 1882.
Approved.
H. M. TELLER, *Secretary.*

356 DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,
WASHINGTON, D. C., *December* 9, 1882.

To registers and receivers and surveyors general.

GENTLEMEN: By direction, contained in letter dated the 7th inst., from the honorable Secretary of the Interior, paragraph No. 8 of the preceding circular of September 22, 1882, relating to placer mining claims, has been amended so as to read as follows:

"8. No application by an association of persons for patent to a placer claim will be allowed to embrace more than one hundred and sixty acres, and not less than five hundred dollars' worth of work must be shown to have been expended upon or for the benefit of each separate location embraced in such application. If an individual becomes the purchaser and possessor of several separate claims, of twenty acres each or less, he may be permitted to include in his application for patent any number of such claims contiguous to each other, not exceeding in the aggregate one hundred and sixty acres, but upon or for the benefit of each original claim or location so embraced he or his grantors must have expended the sum of five hundred dollars in improvements."

You are instructed to observe this modification of my said circular of September 22, 1882.

Very respectfully, N. C. McFARLAND,
Commissioner.

357 DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,
WASHINGTON, D. C., *November* 16, 1882.

To United States surveyors general.

GENTLEMEN: The regulations of this office require that the plats and field-notes of surveys of mining claims shall disclose all con-

flicts between such surveys and prior surveys, giving the areas of conflicts.

The rule has not been properly observed in all cases. Your attention is invited to the following particulars, which should be observed in the survey of every mining claim:

1. The exterior boundaries of the claim should be represented on the plat of survey and in the field-notes.

2. The intersection of the lines of the survey with the lines of conflicting prior surveys should be noted in the field-notes and represented upon the plat.

3. Conflicts with unsurveyed claims, where the applicant for survey does not claim the area in conflict, should be shown by actual survey.

4. The total area of the claim embraced by the exterior
358 boundaries should be stated, and also the area in conflict with each intersecting survey, substantially as follows:

	Acres.
Total area of claim	10.50
Area in conflict with survey No. 302	1.56
Area in conflict with survey No. 948	2.33
Area in conflict with Mountain Maid Lode mining claim, unsurveyed	1.48

In a number of instances that have come to the attention of this office the total area in conflict has been given, but not the area in conflict with each intersecting claim. The portion of the plat not in conflict has been colored and the remainder left uncolored. The language of the field-notes has been such as to convey the idea that the conflicting areas were excluded from the claim, whereas such was not the intention. It does not follow that because mining surveys are required to exhibit all conflicts with prior surveys the areas of conflict are to be excluded. The field-notes and plat are made a part of the application for patent, and care should be taken that the description does not inadvertently exclude portions intended to be retained.

359 It is better that the application for patent should state the portions to be excluded in express terms. A survey executed as in the example given will enable the applicant for patent to exclude such conflicts as may seem desirable.

For instance, the conflict with survey No. 302 and with the Mountain Maid Lode claim might be excluded and that with survey No. 948 included.

Your attention is also invited to another matter. The practice of coloring portions of surveys, leaving other portions uncolored, is open to the same objections that have been stated concerning the field-notes. In the future no coloring will be used.

Very respectfully, N. C. McFARLAND,
Commissioner.

Endorsed: Plaintiff's Exhibit I. John B. Thompson, special examiner. Filed Nov. 1, 1886. T. J. Edwards, clerk.

360 PL'FF'S EX. K (WASHINGTON).

C. DEPARTMENT OF THE INTERIOR, D.
GENERAL LAND OFFICE, M. E., N. M.
WASHINGTON, D. C., *January 26th*, 1886.

I, Wm. A. J. Sparks, Commissioner of the General Land Office, do hereby certify that the annexed copies of the letter to the hon. Secretary of the Interior, dated January 19th, 1884, recommending that a suit be brought by the Government to vacate the title of the State of Nevada to the E. ½ of S. E. ¼ of sec. 33 and W. ½ of S. W. ¼ of sec. 34, t'p 8 N., R. 50 E., Mount Diablo meridian, and of the circular of October 26, 1880, respecting the grant of lands made to the State of Nevada by the act of June 16, 1880, are true and literal exemplifications of the records thereof in this office.

In testimony whereof I have hereunto subscribed my name and caused the seal of this office to be affixed, at the city of Washington, on the day and year above written.

[L. S.] WM. A. J. SPARKS,
Commissioner of General Land Office.

361 DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,
WASHINGTON, D. C., *Jan.* 19, 1884.

Hon. H. M. Teller, Secretary of the Interior.

SIR: I have the honor to state that on May 5, 1883, a list of lands selected for the State of Nevada under the provisions of the act of Congress of June 16, 1880, entitled "An act to grant to the State of Nevada lands in lieu of the sixteenth and thirty-sixth sections in said State (21 Stat., 277, 278), was approved by you upon my certificate; that the tracts embraced therein had been duly examined and found to be subject to said selection and free from conflict. It has since been discovered that said list embraced certain tracts to which the right of selection had not been determined by this office or Department at the date of such certification and approval, but material questions relative thereto and involving the rights of adverse claimants were then pending before me in regular proceedings on appeal from a decision of the district land officers at Eureka, Nevada. The certification and approval referred to were fraudulently obtained under the following circumstances:

On May 19, 1879, Joseph T. Williams made desert-land entry No. 158 at the Eureka, Nevada, land office, embracing, among other tracts, the S. ½ of the S. E. ¼ of section 33 and the W. ½ of the S. W. ¼ of section 34, township 8, range 50. On May 20, 1882, Wil-
362 liams executed a written relinquishment of said entry, which relinquishment was filed in the district land office June 9th, 1882, and thereon the entry was canceled by Commissioner's letter to the register and receiver, dated August 4, 1882, received at the local office August 12, 1882.

In October, 1882, the register and receiver transmitted to this

office with their regular monthly returns a list purporting to be list No. 24 of selections by the State of Nevada under the act of Congress of June 16, 1880, which was certified by the register and receiver to have been filed September 2, 1882, their certificate bearing date Sept. 16, 1882.

This list was not signed by the selecting agent. On September 6, 1882, Messrs. Curtis & Burdett, as attorneys for Messrs. F. O. Matthiessen and L. B. Ward, filed in this office an application for the reinstatement of desert entry No. 158, together with a protest against so much of the aforementioned selection as embraced the E. ½ of the S. E. ¼ of section 33 and the W. ½ of the S. W. ¼ of section 34–3–50, claiming to have derived an interest in said land by purchase from Williams through intermediate parties and to have expended a large sum of money, to wit, more than $50,000, in erecting a stamp-mill thereon.

On January 8th, 1883, Messrs. Matthiessen and Ward made application at the local office for a patent for a mill site on lands claimed by them within tracts embraced in Williams' original entry. The register and receiver rejected the application for the reason that the land applied for was included in a selection made by the
363 State of Nevada in list No. 24, filed Sept. 2, 1882. From this decision applicants on the same day appealed to this office. The application, appeal, and accompanying papers were transmitted by the register January 10, 1883, and were received here January 18th, 1883.

On February 21, 1883, I denied the application for a reinstatement of the desert-land entry, stating in reference to the accompanying protest that "the question of the validity of the State selection will be determined in due course of action thereon by this office." (See Copp's Land Owner, June 1, 1883, p. 69.) After receipt by this office of notice of the mill-site claim adverse to the claim of State selection a note of the conflicting claim was made on list No. 24 by writing in pencil in the margin of said list, opposite the tracts in controversy, the words "mill site." This is the customary method of denoting the existence of a claim adverse to a State selection, and such note operates as a suspension of action upon the State selection until the adverse claim has been disposed of.

In the present case this note of suspension was fraudulently erased by some person unknown to me, and when list No. 24 was taken up for action and no note of adverse claim appeared thereon, owing to such erasure, all the lands embraced in said list were, with other lands, included in different lists, certified, and approved, as hereinbefore stated.

I transmit herewith original list No. 24, which shows the erasure above referred to. While this list was before this office and previous to certification and approval it was subject to inspection and was inspected by parties in interest. No person could have
364 had any interest or motive in making such erasure except parties claiming under the State selection or their agents. That the erasure was made for the purpose of fraudulently obtain-

ing favorable action upon said selection is the only conclusion that can be drawn from the facts and circumstances of this case.

In Dec., 1883, the mill-site claim was called up for consideration and action in connection with the claim of State selection, when it was ascertained that the land had been approved to the State, as above set forth, and the discovery was made of the method by which such approval had been secured. Thereupon I telegraphed the Governor of Nevada (under date of Dec. 11, 1883), requesting him to return said list. The Governor replied, under date of Dec. 5th, 1883, that the register of the (State) land office, by the advice of the Attorney General, considers it his duty to patent the land referred to unless restrained by order of court.

On Dec. 15, in response to departmental inquiry, the Governor telegraphed you that the land referred to had been applied for and contracted to J. T. Williams, but that patent had not been issued (by the State). On Dec. 18 the Governor addressed a letter to you, declining to return the approved list and stating that he saw no other course than to let a court of equity determine the right to the land.

On Dec. 29 I addressed a letter to Mr. George W. Merrill, State land agent for Nevada, who was then in Washington, requesting to be informed whether any communication had been received by him from the Governor since the 18th of said month which would
365 indicate a disposition to either return the list or relinquish to the United States any title the State may have derived to the tracts of land in question through the approved list. Mr. Merrill replied on Dec. 31 that nothing had been received from the Governor since the 18th.

Having exhausted every effort to obtain a voluntary relinquishment of the illegal certification, I respectfully recommend that the hon. Attorney-General be requested to cause the proper proceedings to be instituted to obtain a judicial decree declaring said list null and void so far as the same embraces the east half of the southeast quarter of section thirty-three and the west half of the southwest quarter of section thirty-four, of township number eight north, of range fifty east, and that Joseph T. Williams, of Nevada, be joined as a party to such suit.

The following papers are transmitted herewith:

Papers relating to the original State selections.

Original list No. 24, filed Sept. 2, 1882.

Copy of Commissioner's letter returning the same to register and receiver for signature of selecting agent, August 28, 1883.

Letter from register at Eureka retransmitting list No. 24 with signature of selecting agent, Sept. 16, 1883.

Papers showing pendency of proceedings on May 5, 1883.

Mill-site application, January 8, 1883, with note of rejection by local officers and appeal therefrom, and accompanying papers (11 papers).

Copy of Commissioner's decision of February 21, 1883, re-
366 jecting application to reinstate desert land entry No. 158 and reserving question relative to validity of State selection.

Notice of appearance of E. C. Ford as attorney for claimant under State selection, list No. 24, and against mill-site claim of Matthiessen and Ward, Feb. 8, 1883.

Protest and argument of Curtis & Burdett, attorneys for mill-site applicants, against selection by State of Nevada, April 4, 1883, with acknowledgment of service, same date.

Reply of E. C. Ford, attorney for claimants under State selection; no date; service acknowledged May 5, 1883; received in G. L. O. May 7, 1883.

Papers relating to approved list.

Copy of approved list No. 2, May 5, 1883.

Correspondence with State authorities relative to return of list (5 papers).

Witnesses to the fact of erasure made on original list No. 24 will be Henry Howes and James J. Barnes, General Land Office, Washington, D. C.

Very respectfully,

(Signed) N. C. McFARLAND, *Commissioner.*

367 *Circular.*

Enclosure.

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE, *Oct.* 26, 1880.

Register & receiver, Eureka, Nevada.

GENTLEMEN: Herewith you will receive a copy of the act of Congress approved June 16, 1880, entitled "An act to grant to the State of Nevada lands in lieu of the sixteenth and thirty-sixth sections in said State."

In order to facilitate the business of selections under this act, I have to call your attention to the following:

1st. The whole area to which the State of Nevada is entitled under this act is two million acres (2,000,000).

2d. The act requires the selections to be made "from any unappropriated non-mineral public land in said State in quantities not less than the smallest legal subdivision."

3d. The selection must be based upon the official township plats of the public surveys, which are required to be approved by the surveyor general and on file in the local land office at the time of filing the selection.

368 4th. No selection is admissible upon any land to which a pre-emption or other valid claim shall be legally established, nor on any land which is or may be reserved from sale by any law of Congress or proclamation of the President of the United States, nor upon any tract which is reserved or withdrawn from market for any purpose whatever excepting lands which have been withdrawn or returned by the surveyor general as mineral in character. The State may file application for lands so withdrawn or returned, but before the application can be allowed it will be required

to publish for thirty days a notice in a newspaper designated by the register describing the land applied for, and giving time and place when such selection will be tendered.

You will also post in your office a copy of the notice for the same period.

Proof of publication will consist of the affidavit of the publisher of the newspaper, in a printed form, in which the notice was published, and you will furnish your own certificate as to posting in your office. Where, after such publication of notice has been regularly made, no affidavits alleging the mineral character of the
369 land *has* been filed with you, you will allow the selections upon the filing of a proper non-mineral affidavit by the selecting agent of the State.

5th. The selecting agent of the State should file in your office an authenticated copy of his letter of appointment or other satisfactory evidence of his authority, and it is important and necessary that he should make such careful and thorough preliminary examination as will enable him to select lands to which there may exist no valid claim by pre-emption or otherwise, and to avoid embarrassments and delay consequent upon such conflicts you will also examine the plats, records, and paper- in your office before the lists of lands so selected are filed, and see that such selections are in all respects free from such objection.

Herewith you will receive the form of a list to be used for selection. This form requires the date to be given when the list is filed in your office, such date being regarded as the date of selection, so that in the event of pre-emption or other conflicts the ques-
370 tion as to priority of right may be properly settled. The lists should bear a regular series of numbers from No. 1 and should be signed by the agent. If the list is regular and complete you will enter up the selection- on your books and mark them on the plats, sign the official certificate as to the correctness of the list of selections, and, upon receipt of the legal fees thereon (as hereinafter stated), transmit the same to this office with your current monthly returns.

The register & receiver are each allowed a fee on one dollar for each final location of 160 acres, to be paid by the State, and no lists of selections will be transmitted to this office until the legal fees shall have been so paid, the receipt of which you will acknowledge in your official certificate attached to the list, and the receiver will report the same in the usual manner in his monthly and quarterly accounts.

Very respectfully,

C. W. HOLCOMB,
Acting Commissioner.

Endorsed: Plaintiff's Exhibit K. John B. Thompson, special examiner. Filed Nov. 1, 1886. T. J. Edwards, clerk.

371 PLAINTIFF'S EX. L (WASHINGTON).

WASHINGTON, D. C., *September 6th*, 1882.

Hon. N. C. McFarland, Commissioner of the General Land Office.

SIR: We respectfully call attention to desert-land entry No. 158 made by Joseph T. Williams at the Eureka land office, Nevada, embracing N. E. ¼ of N. W. ¼ of section 3, town. 7, the S. ½ of S. W. ¼ and N. W. ¼ of S. W. ¼ of section 34, town. 8, and E. ½ of S. E. ¼ of section 33, town. 8, range 50 E., M. D. M.

Mr. Williams made his declaration to enter said tracts May 19, 1879. Subsequently, to wit, the 26th day of July, 1879, he conveyed to the New Philadelphia Silver Mining Company the E. ½ of S. E. ¼ of section 33, town. 8 N., R. 50 east aforesaid, containing eighty acres, together with certain water rights, as will more fully appear in a copy of his said deed herewith, marked "Exhibit A," and for which the said company paid the consideration of five thousand dollars in gold. Relying upon the good faith of Williams in perfecting title under the laws of the United States, and thereby perfecting its title, the said company erected upon the tract
372 purchased of him a stamp-mill at an expense of fifty thousand dollars, and the company or its successors have been in uninterrupted possession of the property from the date of purchase to the present time. The undersigned, as successors of said mining company, having acquired title on the 16th day of September, 1881, and learning that Williams was disposed to defeat the conveyance which he had made, endeavored to obtain recognition as his assignees, but failed therein, as the correspondence of your office will show. We then requested Williams to relinquish and thereby place us in a position by which we could acquire title from the United States in our own right. His reply was equivocal and such as to mislead us as to his intentions, and persuaded us that he would not comply. We thereafter used due diligence to secure such information of any change in the entry as we were entitled to receive, in view of the large amount involved, by corresponding with the local officers at Eureka, as will appear from a letter of our agent
373 of 25th July last and the answer thereto from the register of the 3d August, copies of which are herewith enclosed, marked Exhibits B and C.

We now learn, upon inquiry of your bureau, that a relinquishment was executed by Williams on the 20th of May last, was filed in the local office on the 9th of June following, and was forwarded to your office on the same day, being received there on the 16th of same month.

Further, that on the 4th ultimo the case was reached in the order of business, and a letter of cancellation was that day addressed to the register and receiver, which was received by them and noted on their tract books on the 12th day of the same month, and acknowledgment of the receipt made on the 21st. It will thus appear that at the time of the inquiry made by our agent (July 25th last), the purport of which must have been well understood by the register,

as to the status of the Williams entry that officer knew of the relinquishment filed by Williams, and that, notwithstanding the large interests we had involved, he failed to give to our agent
374 that information. We are further informed, by telegraph from Nevada, that simultaneously with the noting of the cancellation on the books of the local office Williams applied to enter the tract of land in question as a State selection, thus showing that no time was lost in conveying to him information of the receipt of your letter of cancellation. We now respectfully ask that your letter of August 4th, cancelling said desert-land entry No. 158, be recalled, and that the said entry be reinstated on the records of your office.

We make this request for these reasons, viz: That as we were assignees of Williams for a valuable consideration of a portion of his said entry, he could not, without our knowledge and consent, lawfully relinquish to the United States land which he had already disposed of to us.

We are aware that the Department does not recognize assignments of this nature to the extent of issuing patent to the assignee, but there is nothing in the law regulating the disposal of the desert lands which prohibits such sales or transfers, and we believe
375 it to be within the proper duties of the land department to recognize such assignments in the hands of innocent purchasers to the extent at least of affording them a hearing to show cause why their title should not be defeated by reason of the neglect or bad faith of the original claimant. We ask the reinstatement of the entry for this further reason, that the correspondence submitted will show that, notwithstanding the large interests held by us in a portion of these lands covered by the Williams entry, we have not been accorded the information which we sought and which it was the duty of the register to give, and which, if given, would have enabled us to have taken proper steps to protect ourselves. If, on the receipt by the register of the letter written him by our agent on the 25th of July last, we had been promptly informed that such relinquishment had been filed, we, through our agent, could have made application for the land as soon as the notice of cancellation was received, as we were prepared to do, and by aid of attorneys in Washington could have notified him by telegraph of
376 the day when the letter of cancellation left the Department and of the day when it should be expected at Eureka. By the failure of the register to give this information, either to our agent, Mr. Gluyas, at Hot Creek, or to our attorneys at Eureka, we have been deprived of the opportunity which the practice of the land department accords to us, and which, in view of our equities, we were especially entitled to, and a preference right to enter the land has in effect been afforded to Williams. We beg to call particular attention to the dates in this case. The relinquishment was filed in the local office on the 9th of June, and was transmitted by the register on that day. Between that time and the date when action was taken in your office we (on the 25th day of July), through our agent, asked information of the register as to the con-

dition of Williams' entry and as to whether any change had occurred relative to the same. We would state in this connection that prior to this date correspondence had been carried on between our agent and the register, and there can be no room to doubt that the
377 latter was fully cognizant of the fact that we were owners of the land by purchase from Williams and had valuable improvements thereon, and that it was our desire to perfect title to the same.

In view of these facts he should, especially at the request of our agent, have given information of the status of Williams' entry and of so important a procedure to us as the filing of a relinquishment; that he utterly failed to do so is shown by his letter of August 3d, and in view of these circumstances we think it clearly within the discretion and the lawful authority of the Commissioner to reinstate the entry of Williams, and thereafter to afford us opportunity to show cause why the same should not be cancelled, or, if cancelled, to afford us opportunity to acquire title to the land and be made secure in the large outlay we have made thereon.

We respectfully ask for early attention to this our application, and also desire that this be treated as a protest against the approval of the State selection said to have been made by Williams of the eighty-acre tract in question, and which is referred to in the foregoing, or of any selection or entry in the E. ½ of S. E. ¼ of section
378 33, town. 8 N., R. 50 E., M. D. M., which the returns from the local office may show to have been made.

Very respectfully,

FRANZ O. MATTHIESSEN,
LEBBEUS B. WARD,
By CURTIS & BURDETT,
Their Attorneys.

Endorsed: Plaintiff's Exhibit L. John B. Thompson, special examiner. Filed Nov. 1, 1886. T. J. Elwards, clerk.

379 PLAINTIFF'S EXHIBIT M.

2538.

FEBRUARY 24TH.

Messrs. Abbett and Fuller, 239 Broadway, N. Y.

GENTLEMEN: We enclose copy of the Commissioner's decision rejecting our application for the reinstatement of the Williams desert-land entry. As we intimated in our first interview with you, the chances of success in this case were desperate, and while we saw a possibility of getting a favorable decision, we were not very hopeful. We are undecided whether or not to attempt an appeal, and doubt whether an appeal will be entertained if we take one; however, the case might in any event be taken to the Secretary under rules 83 and 84 of the rules of practice. We are inclined to think that the best thing to do now is to oppose the State selection as having been made on lands occupied by others, and therefore not subject to such selection.

You will observe the closing sentence in the Commissioner's decision, and in an interview had to-day with the clerk who wrote
380 up this decision it was hinted that our remedy lay in opposing the State selection. We will at the same time prosecute the appeal in the mill-site application, as the two matters will have to be considered together, although they are resting in different divisions of the General Land Office. We have to-day been engineering to transfer the fight to the pre-emption division, and think we have succeeded.

We hear nothing from Nevada with reference to the location of a portion of the Ernst pre-emption claim. What are your advices from that quarter?

Very respectfully, CURTIS & BURDETT.

Endorsed: Plaintiff's Exhibit M. John B. Thompson, special examiner. Filed Nov. 1, 1886. T. J. Edwards, clerk.

381 PLAINTIFF'S EXHIBIT N. John B. Thompson, Special Examiner.

NEW YORK, *August* 22*d*, 1883.

Messrs. Curtis & Burdett, Washington, D. C.

GENTLEMEN: We are hoping daily to hear that the decision in the mill-site case has been rendered. Our Mr. Gluyas has a negotiation pending which may materially change the aspect of the dispute over the water rights, but which we do not wish to act upon without knowing whether our right to the mill site is sustained or not.

Yours truly, L. B. WARD.

Endorsed: 5100. L. B. Ward, N. Y. city, N. Y. 22, 23 Aug., '83. My understanding is that this case was to be taken up. N. C. M. Y. Rel. to the mill-site case. 194. Ans'd Aug. 23, '83. 8–4.

5100.

AUGUST 23D.

L. B. Ward, Esq., 229 Broadway, N. Y.

DEAR SIR: I am in receipt of your letter to the firm of the 22d instant, and personally dic-ate a reply. I find on inquiry at
382 the Department that owing to the absence of clerks and the press of business little or no progress had been made with the mill-site case in the mineral division. I was considerably disappointed at this, as you will be, and to-day had the Commissioner send for the chief of the division and give positive instructions that it should be taken up and decided. I am now assured that it will be put in hand to-morrow. The Commissioner also gave instructions for the head of that division to consult with the chief of the pre-emption division as to the (Williams) State location. I know from frequent conversations with the latter officer that he will advise that the State location of Williams be disallowed, and I think

now, as I did when you were here, that it is only a question of time when a favorable decision will be reached. I had strong assurances that the matter would be hurried through. I have been kept at home a great deal of the time since you were here by reason of the illness of Mrs. Curtiss, who is still quite ill, and I have there-
383 fore been unable to make much headway in the Williams contest. Am getting it in shape, however, and will soon be ready to prepare a rough of the argument.

Very respectfully, W. W. CURTIS.

Endorsed: Plaintiff's Exhibit N. John B. Thompson, special examiner. Filed Nov. 1, 1886. T. J. Edwards, clerk.

384 PL'FF'S EX. O (WASHINGTON).

UNITED STATES OF AMERICA,
DEPARTMENT OF THE INTERIOR,
WASHINGTON, D. C., *February* 24, 1886.

Pursuant to section 882 of the Revised Statutes I hereby certify that the annexed papers are true copies of the originals on file in this Department (eight papers).

In testimony whereof I have hereunto subscribed my name and caused the seal of the Department of the Interior to be affixed the day and year first above written.

[L. S.] H. L. MULDROW,
Acting Secretary of the Interior.
G. M. L.

385 Z. S., J. L. McC.

Abbett & Fuller, 229 Broadway, New York.

NEW YORK, *Feb'y* 21, 1882.

Hon. Noah C. McFarland, Department of the Interior, Washington, D. C.

SIR: We request that your office will give us a hearing if any application is made by Joseph T. Williams, Mrs. Sophie Williams, William F. Ernst, John D. Ernst, Henry B. Campbell, Lafayette Joslyn, Charles Garrett, or their grantees or parties claiming to derive title through them, for any of the land or water rights embraced in the deeds and agreements hereinafter mentioned and of which copies are enclosed for your examination and to be placed on file in your office.

The lands and water rights in question are embraced in portions of sections 28, 29, 33, and 34, township 8 north, range 50 east, Mt. Diablo meridian, the premises being in Hot Creek cañon, Nye county, Nevada. The mining district is called Hot Creek mining district.

386 The deeds and papers enclosed, to which we call your attention, are as follows:

1. A deed from Joseph T. Williams, of Hot Creek, Nye county, Nevada, to the New Philadelphia Silver Mining Company, a corporation of the State of New York, dated July 26, 1879, and recorded July 29, 1879, in Book "J" of Deeds, pp. 534 and 535, Nye county, Nevada, records.

2. A deed from the New Philadelphia Silver Mining Company to Henry B. Stanton, receiver, dated April 15, 1881, and recorded May 5, 1881, in Book "K" of Deeds, pp. 474 to 483, inclusive, Nye county, Nevada, records.

3. A deed from Henry B. Stanton, receiver of the New Philadelphia Silver Mining Company, to Franz O. Matthiessen and Lebbeus B. Ward, dated September 16, 1881, and recorded November 14, 1881, in Book "K" of Deeds, pp. 608 to 629, inclusive, Nye county, Nevada, records.

4. An agreement between Joseph T. Williams and wife and Lafayette Joslyn, dated April 13, 1876, and recorded April 21, 1876, in Book "A" of Miscellany, pp. 420 to 422, inclusive, Nye county, Nevada, records.

5. A deed from Lafayette Joslyn and Charles Garrett to N. S. Trowbridge, dated June 23, 1879, and recorded June 24, 1879, in Book "J" of Deeds, pp. 515 to 517, inclusive, Nye county, Nevada, records.

387 6. A deed from N. S. Trowbridge to the New Philadelphia Silver Mining Company, dated August 19, 1879, and recorded August 20, 1879, in Book "J" of Deeds, pp. 639 and 640, Nye county, Nevada, records.

7. A deed from William F. Ernst to Joseph T. Williams, dated May 20, 1880, and recorded June 10, 1880, in Book "K" of Deeds, pp. 251 and 252, Nye county, Nevada, records.

I send these in consequence of my conversation with the Commissioner on the 10th inst., when introduced to him by Senator McPherson. I then understood from him that the Land Office in Washington was the proper place in which to file the claim of Matthiessen and Ward, and that the mode adopted by me was the proper method for bringing it to the attention of the Department. If any further action is necessary on my part or if any further information is desired I would be much indebted to the Commissioner if he would communicate with me directly, and I will furnish whatever is required.

I have not given the claim as made by us at the present time, because I suppose that the office would not desire to be troubled with that until a practical question arose by some one making a claim to the property adversely to us.

388 Our claim is not only for lands, but practically for the use and control of certain springs and water in Hot Creek cañon in the sections named in the first part of my letter.

The receiver of the New Philadelphia Silver Mining Company, Henry B. Stanton, wrote your office June 18, 1881, in reference to the desert land (being a portion of section 33 referred to in the first part of this letter) for the purpose of protecting the interests of the

company of which he was receiver, provided any application should be made at your office.

I have the honor to be, very respectfully, your obedient servant,

(Signed) LEON ABBETT,
Per H. S.

389 This indenture, made the 15th day of April, in the year one thousand eight hundred and eighty-one, between the New Philadelphia Silver Mining Company, a corporation of the State of New York, party of the first part, and Henry B. Stanton, of the city, county, and State of New York, as receiver of the said New Philadelphia Silver Mining Company, appointed by an order of the supreme court of the State of New York for the first judicial department dated on the seventh day of July, 1880, party of the second part, witnesseth:

That the said party of the first part, in compliance with the order of said court dated August 3, 1880, for and in consideration of the sum of one dollar, lawful money of the United States of America, to it in hand paid by the said party of the second part, the receipt whereof is hereby acknowledged, has granted, bargained, sold, remised, released, and forever quitclaimed, and by these presents does grant, bargain, sell, remise, release, and forever quitclaim, unto the said party of the second part and to his successors and assigns all and singular the mines, ten-stamp mill, water rights, together with all personal property of every kind and nature whatsoever now owned by said company or that may hereafter be acquired by it, to-
390 gether with all the real estate owned by said company, with the buildings now upon the same or that may hereafter be erected thereon, the said real estate being more particularly described as follows—that is to say: All that piece or parcel of land, with all the right, title, and interest of the said party of the first part in and to the vein or lode of rock containing precious metals and ores of gold and silver therein contained, situate in the Hot Creek mining district, county of Nye and State of Nevada, in the district of land at Eureka, containing five acres and fifty-one one-hundredths of an acre of land, more or less, and is bounded, described, and plotted as follows, with magnetic variations fifteen degrees thirty minutes east, to wit: Beginning at a post marked "No. 1, U. S. survey No. 37," from which the centre of the West Rattlesnake spring bears north forty-three degrees ten minutes east at the distance of three hundred and thirteen feet, and the southwesterly corner of the Jackson stone cabin bears north two degrees forty-five minutes west at the distance of one hundred and seventy-eight and one-half feet, thence from said post No. 1 north forty-five degrees west two hundred feet to post "No. 2, U. S. survey No. 37;" thence north forty-five degrees east twelve hundred feet to post marked "No. 3, U. S. survey No. 37;"
391 thence south forty-five degrees east two hundred feet to post marked "No. 4, U. S. survey No. 37," from which the location monument on the croppings bears west at the distance of one hundred and forty-one and one-half feet and the centre of the deep vertical shaft bears south eighty-two degrees thirty minutes west at the dis-

tance of one hundred and ten feet; thence from said post No. 4 south forty-five degrees west twelve hundred feet to the place of beginning, being mining claim or premises described in mineral entry No. 222, granted to William G. Smith and Nicholas E. Paine, on file in the General Land Office of the United States, numbered 1656, and recorded February 10th, 1876, in vol. 19, pages 161 to 166, inclusive, and known and designated as the "New Philadelphia ledge and Co. lode," and conveyed to said party of the first part by said Smith and Paine by deed dated the sixth day of May, 1878, and recorded August 19th, 1878, in the office of the recorder of Nye county, State of Nevada, in Book J of Deeds, pp. 268 and 269.

Also all that certain mining property and mining rights situate in Hot Creek and Argenta mining districts, Nye county, State of Nevada, being twelve hundred feet in length on the croppings
392 running in a northeasterly direction from a monument hereinafter described; also one hundred and forty feet in width in a southeasterly direction and three hundred feet in width in a northwest direction from said monument, thereby making a surface location of twelve hundred feet long and four hundred and forty feet wide. This monument is situated near Rattlesnake cañon, Nye county, Nevada, five hundred and forty feet in a northwesterly direction from post No. 4 of United States survey No. 37. This mining claim is recorded on the books of the Argenta mining district as the "Lowden Silver Mining Company," page 21, November 13, 1878, being the same property conveyed to the party of the first part in this mortgage by Herman Andresen by deed dated August 15, 1879.

Also all the right, title, and interest of the party of the first part hereto of, in, and to that certain mining claim known as the "Resumption mining claim," and more particularly described as follows, viz: Consisting of fifteen hundred feet in length and six hundred feet in width and situated in Argenta mining district, Nye county, Nevada, about thirty-five hundred feet in a northerly direction from the Bullion mine, in said district, the said Resumption mining claim having been located on the first day of January, A. D.
393 1879, and duly recorded, as appears from the mining records of said district, on page —, Book A of said records, being the same property conveyed to the party of the first part to this mortgage by H. Andresen by deed dated October 29, 1879, and recorded in the office of the recorder of Nye county, Nevada, on November 5th, 1879, in Book K of Deeds, pages 100, 111, and 112.

Also all that certain piece or parcel or lot of land situate in Nye county, State of Nevada, and bounded and particularly described as follows, to wit: Commencing at the northeast corner of a certain corral in Hot Creek, Nye county, Nevada, known as the "Wall Corral," running thence northwesterly to the southeast corner of the garden formerly belonging to L. Joslyn; thence following the northerly line of said garden fence around and to the southwest corner of said garden; thence in a direct line with the line of said garden fence nearly south to the southerly line of section No. —; thence easterly to an extended line of the easterly line of said Wall Corral; thence northerly to the place of beginning, being the property

heretofore owned by Garrett and Joslyn and known as Joslyn's station at Hot Creek, Nye county, Nevada, and conveyed to the
394 party of the first part to this deed by N. S. Trowbridge by deed dated August 19, 1879, and recorded in the office of the recorder of Nye county, Nevada, in Book II of Deeds, pages 639 and 640, on August 20, 1879.

Also all the right, title, and interest of the party of the first part hereto of, in, and to all that certain lot, piece, or parcel of land containing eighty acres, situated in Hot Creek, Nye county, Nevada, and more particularly described as follows, viz., being the east ½ of southeast quarter of section thirty-three, township eight north, range 50 east, Mount Diablo meridian, with the exclusive use or right to use all the water needed by the said party of the first part to this deed, their successors or assigns, to supply such mills and other metallurgical works which the said party of the first part, their successors or assigns, may construct or cause to be constructed or erected on said premises in said Hot Creek mining district or that may be needed by them, their successors or assigns, for domestic, smelting, milling, mining, or other uses in the prosecution of their business as a milling and mining company, said water to be taken from the streams and springs upon the ranch or lands of Joseph T. Williams, known as the Hot Creek ranch and springs, at Hot Creek, Nye county, Nevada, and to be conveyed in pipes to said premises
395 and reduction works, being the same premises conveyed to the New Philadelphia Mining Company by said Joseph T. Williams by deed dated July 26, 1879, and recorded in the office of the recorder of Nye county, Nevada, in Book J of Deeds, at pp. 534 and 535, on July 29, 1879.

Also all that certain tract of land situate, lying, and being in Rattlesnake cañon, Nye county, Nevada, and known as survey No. 935, of Nye county, and recorded in Book B of Surveys, on page No. 341, and more particularly described by said survey, being the same property conveyed to the said party of the first part hereto by Alfred Kimber by deed dated October 4, 1878, and recorded in the office of the recorder of Nye county, Nevada, in Book J of Deeds, pages 321 and 322, on October 5th, 1878.

Also all the right, title, and interest of the party of the first part hereto of, in, and to all that certain lot, piece, or parcel of land situate in Nye county, Nevada, bounded and described as follows, viz., bearing expressed from a true meridian, magnetic variation sixteen and one-half degrees east: Beginning at No. (1), a monument about eighty rods northwest of headland of narrow cañon, about one-half mile southwest of hoisting works of the New Philadelphia Silver Mining Company, in Rattlesnake cañon, Nye county, Nevada,
396 running forty chains south fifty-two degrees west to No. (2) monument, on north slope of hill; thence forty chains south thirty-eight degrees east along north side and ridge of summit overlooking basin to No. (3) monument; thence forty chains north fifty-two degrees east to monument No. (4), on south slope of hill; thence north thirty-eight degrees west along west boundary of survey made for H. R. Lounsberry to place of beginning, containing one hun-

dred and sixty acres of land and known as survey No. 937, &c., being the same property conveyed to the party of the first part to this mortgage by J. T. Rook by deed dated October 22, 1878, and recorded in the office of the recorder of Nye county, Nevada, in Book J of Deeds, at pp. 363 and 364, on November 5, 1878.

Also all the right, title, and interest of the party of the first part hereto of, in, and to all that certain tract of land situated in Nye county, State of Nevada, in Rattlesnake cañon, about ten miles north from Tybo, Nye county, Nevada, bounded and described as follows, viz., bearings expressed from a true meridian, magnetic variation sixteen and one-half degrees east: Beginning at No. (1), a tall pine tree on north side of narrow cañon about one-quarter mile southwest from the hoisting works of the New Philadelphia Silver Min-
397 ing Company, in Rattlesnake cañon, running south fifty-two degrees west; thence fifty-five chains along bed of cañon to monument No. (2) and bluff at head of cañon; thence south thirty-eight degrees east twenty-nine and nine one-hundredths chains to No. (3) monument, on east side of summit of wooded hill; thence north fifty-two degrees east fifty-five chains along east side of summit to No. (4) monument; thence north thirty-eight degrees west twenty-nine and nine one-hundredths chains to the place of beginning, containing one hundred and sixty acres of land and known as survey No. 938, &c, being the same property conveyed to the party of the first part by H. R. Lounsberry by deed dated October 22, 1878, and recorded in the office of the recorder of Nye county, Nevada, on the 1st November, 1878, in Book J of Deeds, pp. 359 and 360.

Also all that certain lot, piece, or parcel of land situate, lying, and being in the Hot Creek mining district, county of Nye and State of Nevada, and bounded and particularly described as follows, to wit, being survey No. 944 of Nye county surveys, and recorded in Book B of Surveys, page 346, Nye county records, and more particularly described by said survey, being the same property conveyed to
398 the party of the first part by Henry Stammers by deed dated November 26, 1878, and recorded December 18, 1878, in the office of the recorder of Nye county, Nevada, in Book J of Deeds, pp. 627 and 628.

Also all that piece, parcel, or lot of land situate, lying, and being in the Hot Creek mining district, county of Nye and State of Nevada, bounded and described as follows, to wit, being survey No. 945 of Nye county surveys and recorded in Book B of Surveys, page 347, Nye county records, and more particularly described by said survey, being the property conveyed to the party of the first part by Florenz Mayer by deed dated November 26, 1878, and recorded December 18, 1878, in Book J of Deeds, pp. 625 and 626 of the records of Nye county, Nevada.

Also all that certain lot, piece, or parcel of land situate, lying, and being in the Hot Creek mining district, county of Nye and State of Nevada, and bounded and described as follows, to wit, being Nye county survey No. 946, recorded on page 345 of Book B of Surveys, Nye county records, and more particularly described in said survey, being the same property conveyed to the party of the first part by

Herman Andresen by deed dated November 26, 1878, and recorded in the office of the recorder of Nye county, Nevada, in Book J of Deeds, pp. 626 and 627.

399 Also all the right, title, and interest of the party of the first part of, in, and to a certain mining claim and location known as the Chieftain mine, situated in the Hot Creek mining district, Nye county, Nevada, being a surface location fifteen hundred feet long and six hundred feet wide, bounded on the east by the Boston and Alturas mines and located by the party of the first part January 8, 1880, and the record whereof is contained in folio 297 of the books of the Hot Creek mining district, Nye county, Nevada, dated January 9, 1880.

Also all the right, title, and interest of the party of the first part of, in, and to a certain mining claim and location known as the Huron mine, situated in the Hot Creek mining district, Nye county, Nevada, about three miles south of Hot Creek and near the mouth or outlet of Old Dominion cañon, being a surface location fifteen hundred feet long by six hundred feet wide, said claim having been located by the party of the first part January 10, 1880, the record of which is to be found on folio 298 of the books of the Hot Creek mining district, Nye county, Nevada, under date January 11, 1880.

Also all the right, title, and interest of the party of the first part of, in, and to a certain mining claim and location known as the Superior mine, situate on top of Keystone Mountain, one mile

400 southwest of Rattlesnake Cañon spring, in Hot Creek mining district, Nye county, Nevada, being a surface location fifteen hundred feet long and six hundred feet wide, and located by the party of the first part January 10, 1880, and the record whereof is contained in folio 299 of the books of Hot Creek mining district, Nye county, Nevada, dated January 11, 1880.

Also all the right, title, and interest of the party of the first part of, in, and to a certain mining claim and location known as the Harmony Mining Company (formerly the J. T. Rook mine), situate near the spring in Rattlesnake cañon, in the Hot Creek mining district, Nye county, Nevada, and bounded on the north by the Lowden and Broadway mines and on the east by the New Philadelphia mine, being a surface location one thousand feet long and six hundred feet wide, said claim having been located by the party of the first part January 1, 1880, the record of which is to be found on folio 292 of the books of the Hot Creek mining district, Nye county, Nevada, under date January 2, 1880.

Also all the right, title, and interest of the party of the first part of, in, and to a certain mining claim and location known as the Oregon Mining Company (formerly the "Hercules"), situate near the spring in Rattlesnake cañon, Hot Creek — district,

401 Nye county, Nevada, being a surface location of six hundred feet square, located by the party of the first part January 1, 1880, the record whereof is to be found on folio 291 of the books of the Hot Creek mining district of Nye county, Nevada, under date of January 2, 1880.

Also all the right, title, and interest of the party of the first part

of, in, and to a certain mining claim and location known as the Crystal mine (formerly the Keystone), situate on what is known as Keystone Mountain, about one mile southwest from the Rattlesnake Cañon spring, in the Hot Creek mining district, Nye county, Nevada, being a surface location fifteen hundred feet long and six hundred feet wide, located by the party of the *party of the* first part January 8th, 1880, the record whereof is to be found on folio 296 of books of Hot Creek mining district, Nye county, Nevada, under date of January 9, 1880.

Also all the right, title, and interest of the party of the first part of, in, and to a certain mining claim and location known as the Boston mine, situate on Keystone Mountain, in Hot Creek mining district, Nye county, Nevada, and is bounded on the north by the Alturas mine, one-half mile south of Rattlesnake cañon,
402 being a surface location fifteen hundred feet long and six hundred feet wide and located by the party of the first part January 8, 1880, the record whereof is to be found on folio 295 of the books of the Hot Creek mining district, Nye county, Nevada, under date January 9, 1880.

Also all the right, title, and interest of the party of the first part of, in, and to a certain mining claim and location known as the Missouri Mining Company ("formerly the N. E. Paine mine"), situated on the south side of Rattlesnake cañon about one hundred yards above the spring in Rattlesnake cañon, in Hot Creek mining district, Nye county, Nevada, being a surface location fifteen hundred feet long and six hundred feet wide, located by the party of the first part January 8, 1880, the record whereof is to be found on folio 294 of the books of Hot Creek mining district, Nye county, Nevada, under date of January 9th, 1880.

Also all the right, title, and interest of the party of the first part of, in, and to a certain mining claim and location known as the Rapidan Mining Company (formerly called the "Lulu" mine), situate ten feet south of post No. 38, about three hundred feet south of the spring in Rattlesnake cañon, in Hot Creek mining district, Nye county, Nevada, being a surface location twelve hundred feet long and six hundred feet wide, located by the party of the first part January 3rd, 1880, the record whereof is to be found on
403 folio 293 of the books of the Hot Creek mining district, Nevada, under date of January 4, 1880.

Also all the right, title, and interest of the party of the first part of, in, and to a certain mining claim and location called and known as the Alturas mine, the record whereof is found on the books of the Hot Creek mining district, Nye county, Nevada.

And also all that certain mining property and mining rights situated in Hot Creek mining district, county of Nye and State of Nevada, being (1,000) one thousand feet in length, on the mineral-bearing lead or lode, running in a northeasterly direction (745) seven hundred and forty-five feet, in a southwesterly direction (255) two hundred and fifty-five feet from a monument, which monument is situated near Rattlesnake cañon, Nye county, Nevada, and is on the extended boundary line lying in a northeasterly direction of

United States survey No. 37, post No. 4, eight hundred feet to a point on the boundary line of the "Broadway" location; thence in a southeasterly direction one hundred and ten feet to the location monument of this the "Ophir mine;" also (300) three hundred feet in a southeasterly direction and (110) one hundred and ten feet in a northwesterly direction, making (410) four hundred and ten feet in width, and running the whole length of the (1,000) one thou-
404 sand feet, thereby making a surface location of one thousand feet in length and four hundred and ten feet in width and known as the "Ophir mine."

And also all hoisting and pumping works, machinery and engines, steam-engines, tools, machinery of every kind, chemicals, and equipments, together with all ore taken from the mines of the party of the first part, now owned or hereafter to be owned by said company or in anywise belonging or appertaining to their said mines, mills, and property, and all privileges, rights, and franchises now owned by said company or which shall hereafter be owned by it, and all subsequently acquired real estate and mines, together with all the dips, spurs, and angles, and also all the metals, ores, gold and silver bearing quartz rock and earth thereon, and all the rights, privileges, and franchises thereto incident, appended, and appurtenant or therewith usually had and enjoyed; and also all and singular the tenements, hereditaments, and appurtenances thereto belonging or in anywise appertaining, and the rents, issues, and profits thereof; and also all the estate, right, title, interest, property, possession, claim, and demand whatsoever, as well in law as in equity, of the said party of the first part of, in, or to the said premises and every part and parcel thereof, with the appurtenances:

405 To have and to hold all and singular the said premises, together with the appurtenances and privileges thereto incident, unto the said party of the second part, his successors and assigns forever.

In witness whereof the said party of the first part has caused its corporate seal to be hereto affixed and these presents to be subscribed by its president, vice-president, treasurer, and secretary.

NEW PHILADELPHIA SILVER MINING COMPANY,
By GEO. D. HYDE.
GEO. D. HYDE, *President.*
[CORPORATE SEAL.] NICHOLAS E. PAINE,
Vice-President New Philadelphia Company.
WM. G. SMITH, *Treasurer.*
ALFRED KIMBER, *Secretary.*

Signed and sealed in presence of—
CHARLES NETTLETON.
CHARLES EDGAR MILLS.

STATE OF NEW YORK, }
City and County of New York, } *ss:*

Be it remembered that on this 16th day of April, 1881, A. D., be-

fore me, Charles Nettleton, a commissioner of the State of Nevada in and for the State of New York, residing in said city of New York, personally appeared George D. Hyde, the president of the New
406 Philadelphia Silver Mining Company; Nicholas E. Paine, the vice-president of said company; William G. Smith, the treasurer of said company, and Alfred Kimber, the secretary of said company, to me respectively personally known to be such officers, who, being by me severally duly sworn, did each for himself depose and say that he, the said George D. Hyde, resides in the city of New York, and is the president of said New Philadelphia Silver Mining Company; that he, the said Nicholas E. Paine, is the vice-president of said company, and resides in the county of Westchester, State of New York; that he, the said William G. Smith, is the treasurer of said company, and resides in the city of New York, and that he, the said Alfred Kimber, is the secretary of said company, and resides in the city of New York; and they did further, each for himself, depose and say that they know the corporate seal of said company; that the seal affixed to the foregoing instrument is such corporate seal; that it was so affixed thereto by order of the board of directors of said company, and that they, the said George D. Hyde, Nicholas E. Paine, William G. Smith, and Alfred Kimber, signed their names thereto by order of said board of directors as the president, vice-president, treasurer, and secretary of said company, respectively; and they, each for himself, as such president, vice-president,
407 treasurer, and secretary, at the same time duly acknowledged the foregoing deed to be the voluntary act and deed of said company for the uses and purposes therein mentioned.

In witness whereof I have hereunto set my hand and affixed my official seal this 16th day of April, A. D. 1881.

CHARLES NETTLETON,
[COMMISSIONER'S SEAL.] *Commissioner for Nevada in New York,*
117 *Broadway, N. Y. City.*

(Endorsed:) The New Philadelphia Silver Mining Company to Henry B. Stanton, rec'r. Deed dated April 15th, 1881. Recorded at request of R. Gluyas May 5th, A. D. 1881, at 45 minutes past 10 a. m., in Liber K of Deeds, pages 474, 475, 476, 477, 478, 479, 480, 481, 482, and 483, Nye county, Nevada, records. M. R. Delano, Co. recorder. H. B. Stanton, receiver, 198 Broadway, N. Y. 1882–16042–3.

408 L. Joslyn *et al.* to N. S. Trowbridge.

This indenture, made the twenty-third day of June, in the year of our Lord one thousand eight hundred and seventy-nine, between Lafayette Joslyn, of Hot Creek, Nye county, Nevada, and Chas. Garrett, of Tybo, same county and State, the parties of the first part, and N. S. Trowbridge, of Tybo, same county and State, the party of the second part, witnesseth:

That the said parties of the first part, for and in consideration of

the sum of twenty-four hundred dollars, gold coin of the United States of America, to them in hand paid by the said party of the second part, the receipt whereof is hereby acknowledged, do by these presents remise, release, and forever quitclaim unto the said party of the second part and to his heirs and assigns all that certain lot, piece, or parcel of land situate in the said county of Nye, State of Nevada, and bounded and particularly described as follows, to wit:

Commencing at the northeast corner of a certain corral in Hot Creek, Nye county, Nevada, known as the "Wall corral," running thence northwesterly to the southeast corner of the garden belonging to said first parties; thence following the northerly line
409 of said garden fence around and to the southwest corner of said garden; thence in a direct line with the line of said garden fence nearly south to the southerly line of quarter section No. —; thence easterly to an extended line of the easterly line of said Wall corral; thence northerly to point of beginning, being known as Garrett & Joslyn station, at Hot Creek, Nye county, Nevada, together with all and singular the tenements, hereditaments, and appurtenances thereunto belonging or in anywise appertaining, and the reversion and reversions, remainder and remainders, rents, issues, and profits thereof:

To have and to hold all and singular the said premises, together with the appurtenances, unto the said party of the second part and to his heirs and assigns forever.

In witness whereof the said party of the first part have hereunto set their hands and seals the day and year first above written.

CHARLES GARRETT. [SEAL.]
LAFAYETTE JOSLYN. [SEAL.]

Signed, sealed, and delivered in the presence of—interlineations made before signing—
D. M. BRANNAN.

STATE OF NEVADA, } ss:
County of Nye, }

410 On this twenty-third day of June, A. D. one thousand eight hundred and seventy-nine, before me, George Turin, a notary public in and for said county, residing therein, duly commissioned and sworn, personally appeared Charles Garrett and La Fayette Joslyn, personally known to me to be the same persons described in and who executed the annexed instrument, as named in the annexed instrument as the parties thereto, and therein described as the parties executing the same by said attorney, and the said Chas. Garrett — La Fayette Joslyn acknowledged to me that they executed the same freely and voluntarily and for the uses and purposes therein mentioned.

In witness whereof I have hereunto set my hand and affixed my official seal, at my office, in said county, the day and year in this certificate first above written.

GEORGE TURIN,
Notary Public.

[SEAL.]

Recorded, at the request of N. S. Trowbridge, June 24th, at 10 minutes past 12 m.

GEORGE ERNST, *Recorder*,
By W. S. BRYDEN, *Deputy*.

STATE OF NEVADA, }
County of Nye, } ss:

411 I, M. R. Delano, county recorder in and for said county, do hereby certify the foregoing to be a full, true, and correct copy of a deed from Charles Garrett and L. Joslyn to N. S. Trowbridge, as appears of record in Book J of Deeds, pp. 515, 516, and 517, Nye county, Nevada, records.

In witness whereof I have hereunto set my hand and affixed my official seal this 22nd day of August, A. D. 1881.

M. R. DELANO,
[L. S.] *Co. Recorder.*

(Endorsed:) Copy deed from Garrett & Joslyn to N. S. Trowbridge. Dated June 23d. 1879. 1882. 16042–7.

412 This indenture, made the nineteenth day of August, in the year of our Lord one thousand eight hundred and seventy-nine, between N. S. Trowbridge, of Tybo, Nye county, Nevada, the party of the first part, and the New Philadelphia S. M. Co., a corporation organized under and by virtue of the laws of the State of New York, the party of the second part, witnesseth:

That the said party of the first part, for and in consideration of the sum of twenty-four hundred dollars, legal coin of the United States of America, to him in hand paid by the said party of the second part, the receipt whereof is hereby acknowledged, does by these presents remise, release, and forever quitclaim unto the said party of the second part and to its heirs and assigns all that certain lot, piece, or parcel of land situate in the said county of Nye, State of Nevada, and bounded and particularly described as follows, to wit: Commencing at the northeast corner of a certain corral in Hot Creek, Nye county, Nevada, known as the "Wall corral," running thence northwesterly to the southeast corner of the garden formerly belonging to L. Joslyn; thence following the northerly line of said garden fence around and to the southwest corner of said gar-
413 den; thence in a direct line with the line of said garden fence nearly south to the southerly line of section No. —; thence easterly to an extended line of the easterly line of said "Wall corral;" thence northerly to place of beginning, being the property heretofore owned by Garrett & Joslyn and known as Joslyn's station, at Hot Creek, Nye county, Nevada, together with all and singular the tenements, hereditaments, and appurtenances thereunto belonging or in anywise appertaining and the reversion and reversions, remainder and remainders, rents, issues, and profits thereof:

To have and to hold all and singular the said premises, together with the appurtenances, unto the said party of the second part and to its heirs and assigns forever.

In witness whereof the said party of the first part has hereunto set his hand and seal the day and year first above written.

N. S. TROWBRIDGE. [SEAL.]

Signed, sealed, and delivered in the presence of—

——— ———.

STATE OF NEVADA, } ss:
County of Nye, }

On this nineteenth (19) day of August, A. D. one thousand eight hundred and seventy-nine, before me, George Turin, a notary
414 public in and for said Nye county, residing therein, duly commissioned and sworn, personally appeared N. S. Trowbridge, known to me to be the person described in, whose name is subscribed to, and who executed the within instrument, and did duly acknowledge to me that he executed the same for the uses and purposes therein mentioned.

In witness whereof I have hereunto set my hand and
[SEAL.] affixed my official seal, at my office, in the said county of Nye, the day and year last above written.

GEORGE TURIN,
Notary Public.

Recorded, at request of N. S. Trowbridge, August 20th, 1879, at 11 minutes past 2 p. m., Book 1, pp. 639 and 640.

GEORGE ERNST,
Co. Recorder.

STATE OF NEVADA, } ss:
County of Nye, }

I, M. R. Delano, county recorder for the county of Nye and State of Nevada, do hereby certify that the foregoing is a true, full, and correct copy of a deed from N. S. Trowbridge, of Tybo, Nevada, of the Joslyn property at Hot Creek, Nye county, Nevada, to the New Philadelphia Silver Mining Company, dated 19th day of August, 1879, and recorded in my office the 20th day of August, A. D. 1879, in Liber "I," at pages 639 and 640.

415 In witness whereof I have hereunto set my hand and affixed my official seal this the 2nd day of April, A. D. 1881.

[L. S.] M. R. DELANO,
County Recorder.

(Endorsed:) Copy deed from N. S. Trowbridge to the New Philadelphia Silver Mining Company. Dated August 19, 1879. 1882. 16042–6.

This indenture, made the twenty-sixth day of July, in the year of our Lord one thousand eight hundred and seventy-nine, between Joseph T. Williams, of Hot Creek, Nye county, Nevada, the party of the first part, and the New Philadelphia Silver Mining Company, a corporation duly organized under the laws of the State of New York, party of the second part, witnesseth:

That the said party of the first part, for and in consideration of the sum of five thousand dollars, gold coin of the United States of

America, to him in hand paid by the said party of the second part, the receipt whereof is hereby acknowledged, has granted, bargained, sold, remised, released, conveyed, and quitclaimed, and by these presents does grant, bargain, sell, remise, release, convey, and quitclaim, unto the said party of the second part and to their successors and assigns forever all the right, title, interest, estate, claim, and demand, both in law and in equity, of the said party of the first part in and to that certain lot, piece, or parcel of land, containing eighty acres, situated in Hot Creek, Nye county, Nevada, and more particularly described as follows, viz., being the E. ½ of S. E. ¼ of sec. 33, township 8 N., range 50 E., Mt. Diablo meridian, together with the exclusive use or right to use all the water needed by the said party of the second part, their successors or assigns, to supply such mills and other metallurgical works which the said party of the second part, their successors or assigns, may construct or cause to be erected or constructed on said premises in said Hot Creek mining district or that may be needed by them, their successors or assigns, for domestic, smelting, milling, mining, or other uses in the prosecution of their business as a milling and mining company, said water to be taken from the streams and springs upon the ranch or lands of the said party of the first part, known as the Hot Creek ranch and springs, at Hot Creek, Nye county, Nevada, and to be conveyed in pipes to said premises and reduction works, said party of the first part hereby binding himself, his heirs, executors, and assigns, not to give or sell to any other party the right to use any of the said water, excepting such water as J. W. Merritt may need for a ten (10) stamp mill, to be used only for the reduction of ores from his own mines, provided that said Merritt erects said mill before January 1st, 1880, together with all the rights, privileges, and franchises thereto incident, appendant, and appurtenant or therewith usually had and enjoyed; and also all and singular the tenements, hereditaments, and appurtenances thereunto belonging and the rents, issues, and profits thereof, and also all the estate, right, title, interest, and possession, claim, and demand whatsoever of the said party of the first part of, in, and to the said premises and every part and parcel thereof; to have and to hold all and singular the premises, with the appurtenances and privileges thereto incident, unto the said party of the second part, their successors and assigns forever; and the party of the first part, for himself and his heirs, doth hereby agree to and with the said party of the second party that he has full right and power to sell and convey the said premises and water rights, and that the said premises are now free and clear from all incumbrances, sales, or mortgages made or suffered by said party of the first part.

416

417

418 In witness whereof the said party of the first part has hereunto set his hand and seal the day and year first above written. JOSEPH T. WILLIAMS. [SEAL.]

Signed, sealed, and delivered in the presence of—
N. S. TROWBRIDGE,
J. E. CLAYTON.

STATE OF NEVADA, }
County of Eureka, } ss:

On this 26th day of July, A. D. one thousand eight hundred and seventy-nine, personally appeared before me, C. G. Hubbard, notary public in and for the said county of Eureka, Joseph T. Williams, whose name is subscribed to the annexed instrument as a party thereto, personally known to me to be the same person described in and who executed the said annexed instrument as a party thereto; and said Joseph E. Williams duly acknowledged to me that he executed the same freely and voluntarily and for the uses and purposes therein mentioned.

In witness whereof I have hereunto set my hand and affixed my official seal the day and year in the certificate first above written.

419 CHAS. G. HUBBARD,
Notary Public.

Recorded, at request of N. S. Trowbridge, July 29th, A. D. 1879, at 43 min. past 1 p. m., in Book J of Deeds, pp. 534 & 535, Nye county, Nevada, records.

GEO. ERNST, *Rec'r*,
By W. S. BRYDEN, *Deputy.*

$4.

(Endorsed:) Deed. Joseph T. Williams to New Philadelphia Silver Mining Company. Copy. Dated July 26, 1879.

420 *Agreement—J. T. Williams and Wife with Lafayette Joslyn.*

Article of agreement, made this 13th day of April, A. D. 1876, witnesseth:

That whereas Joseph T. Williams and Lafayette Joslyn, of Hot Creek township, in the county of Nye, State of Nevada, have had prior to this date a conflicting claim to certain lands in this precinct of Hot Creek county and State aforesaid, sec. 33, township 8 N., range 50 E., Mt. Diablo base and meridian, said conflicting claims being now before the United States agent at Eureka, wherein said conflicting claims are situated, and the said Joseph T. Williams claiming rights of pre-emption as the plaintiff and the said Lafayette Joslyn claiming as defendant: Now, it is hereby fully understood and agreed that the said J. T. Williams and his wife, Sophie Williams, as parties of the first part, agree to and with the said Lafayette Joslyn, the party of the second part, for consideration hereinafter specified, that they will give him all ground outside of the main fence southerly of the meadows westerly and easterly below the
421 corrall known as the "Wall ox corrall"—that is to say, sufficient to hold said corrall, with all buildings situated therein, such as fencing, buildings, and improvements, the true intent and meaning being that the said Joslyn shall have a good and sufficient deed for all lands southerly from the fence and easterly sufficient to hold the said Wall corrall; and the said parties of the first

America, to him in hand paid by the said party of the second part, the receipt whereof is hereby acknowledged, has granted, bargained, sold, remised, released, conveyed, and quitclaimed, and by these presents does grant, bargain, sell, remise, release, convey, and quitclaim, unto the said party of the second part and to their successors and assigns forever all the right, title, interest, estate, claim, and demand, both in law and in equity, of the said party of the first part in and to that certain lot, piece, or parcel of land, containing eighty acres, situated in Hot Creek, Nye county, Nevada, and more particularly described as follows, viz., being the E. ½ of S. E. ¼ of sec. 33, township 8 N., range 50 E., Mt. Diablo meridian, together with the exclusive use or right to use all the water needed by the said party of the second part, their successors or assigns, to supply such mills and other metallurgical works which the said party of the second part, their successors or assigns, may construct or cause to be erected or constructed on said premises in said Hot Creek mining district or that may be needed by them, their successors or assigns, for domestic, smelting, milling, mining, or other uses in the prosecution of their business as a milling and mining company, said water to be taken from the streams and springs upon the ranch or lands of the said party of the first part, known as the Hot Creek ranch and springs, at Hot Creek, Nye county, Nevada, and to be conveyed in pipes to said premises and reduction works, said party of the first part hereby binding himself, his heirs, executors, and assigns, not to give or sell to any other party the right to use any of the said water, excepting such water as J. W. Merritt may need for a ten (10) stamp mill, to be used only for the reduction of ores from his own mines, provided that said Merritt erects said mill before January 1st, 1880, together with all the rights, privileges, and franchises thereto incident, appendant, and appurtenant or therewith usually had and enjoyed; and also all and singular the tenements, hereditaments, and appurtenances thereunto belonging and the rents, issues, and profits thereof, and also all the estate, right, title, interest, and possession, claim, and demand whatsoever of the said party of the first part of, in, and to the said premises and every part and parcel thereof; to have and to hold all and singular the premises, with the appurtenances and privileges thereto incident, unto the said party of the second part, their successors and assigns forever; and the party of the first part, for himself and his heirs, doth hereby agree to and with the said party of the second party that he has full right and power to sell and convey the said premises and water rights, and that the said premises are now free and clear from all incumbrances, sales, or mortgages made or suffered by said party of the first part.

In witness whereof the said party of the first part has hereunto set his hand and seal the day and year first above written. JOSEPH T. WILLIAMS. [SEAL.]

Signed, sealed, and delivered in the presence of—
N. S. TROWBRIDGE,
J. E. CLAYTON.

STATE OF NEVADA, }
County of Eureka, } ss:

On this 26th day of July, A. D. one thousand eight hundred and seventy-nine, personally appeared before me, C. G. Hubbard, notary public in and for the said county of Eureka, Joseph T. Williams, whose name is subscribed to the annexed instrument as a party thereto, personally known to me to be the same person described in and who executed the said annexed instrument as a party thereto; and said Joseph E. Williams duly acknowledged to me that he executed the same freely and voluntarily and for the uses and purposes therein mentioned.

In witness whereof I have hereunto set my hand and affixed my official seal the day and year in the certificate first above written.

419 CHAS. G. HUBBARD,
Notary Public.

Recorded, at request of N. S. Trowbridge, July 29th, A. D. 1879, at 43 min. past 1 p. m., in Book J of Deeds, pp. 534 & 535, Nye county, Nevada, records.

GEO. ERNST, *Rec'r*,
By W. S. BRYDEN, *Deputy.*

$4.

(Endorsed:) Deed. Joseph T. Williams to New Philadelphia Silver Mining Company. Copy. Dated July 26, 1879.

420 *Agreement—J. T. Williams and Wife with Lafayette Joslyn.*

Article of agreement, made this 13th day of April, A. D. 1876, witnesseth:

That whereas Joseph T. Williams and Lafayette Joslyn, of Hot Creek township, in the county of Nye, State of Nevada, have had prior to this date a conflicting claim to certain lands in this precinct of Hot Creek county and State aforesaid, sec. 33, township 8 N., range 50 E., Mt. Diablo base and meridian, said conflicting claims being now before the United States agent at Eureka, wherein said conflicting claims are situated, and the said Joseph T. Williams claiming rights of pre-emption as the plaintiff and the said Lafayette Joslyn claiming as defendant: Now, it is hereby fully understood and agreed that the said J. T. Williams and his wife, Sophie Williams, as parties of the first part, agree to and with the said Lafayette Joslyn, the party of the second part, for consideration hereinafter specified, that they will give him all ground outside of the main fence southerly of the meadows westerly and easterly below the
421 corrall known as the "Wall ox corrall"—that is to say, sufficient to hold said corrall, with all buildings situated therein, such as fencing, buildings, and improvements, the true intent and meaning being that the said Joslyn shall have a good and sufficient deed for all lands southerly from the fence and easterly sufficient to hold the said Wall corrall; and the said parties of the first

part agree further to give, by good and sufficient deed, the following-described piece or parcel of land—that is to say, land inside of the main fence northerly, said piece of agricultural land being measured and described as follows:

Commencing at the main fence of lower meadow S. W. corner and running northerly 114 feet; from thence east by south 244 feet; from thence southeast 323½ feet; from thence south bearing west 260 feet, and from thence in a direct line to place of beginning, containing in all about two acres, more or less.

It is also hereby understood and agreed that the said Joslyn shall have sufficient water for irrigating purposes on said land inside of main fence, provided, however, he shall return said water on the meadow or towards its main channel without diversion. Now, for and in consideration of the obligation of the said J. T. Wil-
422 liams and his wife, the said Lafayette Joslyn does hereby agree to withdraw, quitclaim all or any suit at law as pre-emptor to the said meadow or lands now in litigation at Hot Creek, in the county of Nye, State of Nevada, between himself and the said parties of the first part—that is to say, he will relinquish all right and title to the said conflicting claim of public lands hereinbefore mentioned, as also for and in consideration of the premises hereinbefore specified the said Joslyn is to let, have unto the said Williams 20 loads of stable manure from his stable dump—that is to say, loads that two-horse wagon will carry, meaning the ordinary loads that two-horses will pull.

In witness whereof we have hereunto interchanged and set our hands and seals this 13th day of April, A. D. 1876.

JOSEPH T. WILLIAMS. [SEAL.]
SOPHIA WILLIAMS, [SEAL.]
LAFAYETTE JOSLYN. [SEAL.]

Bond.

Know all men by these presents that we, Joseph T. Williams, for himself and for his wife, Sophie Williams, as parties of the first part, and Lafayette Joslyn, as party of the second part, all of the township of Hot Creek, in the county of Nye and State of
423 Nevada, are held and firmly bound each to the other in the sum of three thousand dollars, gold coin of the United States of America, to be paid by either party who shall not in all things abide by and stand to and well and truly keep and perform the covenants, conditions, and agreements in the within instrument and annexed instrument contained on his or their part to be performed at the time and the manner and form therein specified, hereby holding our executors, administrators, or assigns, as well as ourselves, the parties to the annexed contract: Provided, That in the event should the parties mentioned in the annexed contract fulfill their obligation in full, as therein set forth, then and in that event the said contract, as also this bond, shall be void; otherwise to remain in full force.

Witness our hands and seals this 13th day of April, A. D. 1876.

JOSEPH T. WILLIAMS. [SEAL.]
SOPHIE WILLIAMS. [SEAL.]
LAFAYETTE JOSLYN. [SEAL.]

STATE OF NEVADA, } ss:
County of Nye, }

On this thirteenth day of April, one thousand eight hundred and seventy-six, before me, Justin E. Cook, a notary public in and for said county, residing therein, duly commissioned and
424 sworn, personally appeared Lafayette Joslyn, Joseph T. Williams, and Sophie Williams, his wife, whose names are subscribed to the annexed instrument as parties thereto, severally known to me personally to be the same persons described in and who executed the said annexed instrument, and they severally duly acknowledged to me that they executed the same freely and voluntarily and for the uses and purposes therein mentioned; and the said Sophie Williams, wife of said J. T. Williams, who is personally known to me to be the person whose name is subscribed to the annexed — as a party thereto, having been by me made acquainted with the contents of such instruments, duly acknowledged to me, on an examination apart from and without the hearing of her husband, that she executed the same freely and voluntarily and for the uses and purposes therein mentioned without fear or compulsion or undue influence of her husband, and that she does not wish to retract the execution of the same.

In witness whereof I have hereunto set my hand and affixed my official seal the day and year last above written.

[SEAL.] JUSTIN E. COOK,
Notary Public.

425 Recorded at request of Justin E. Cook April 21st, 1876, at six o'clock p. m., in Book A of Miscellany, pp. 420, 421, 422.

JAS. A. SERVICE, *Recorder,*
By W. N. GRANGER, *Deputy.*

STATE OF NEVADA, } ss:
County of Nye, }

I, M. R. Delano, county recorder in and for the said county, do hereby certify that the foregoing is a full, true, and correct copy of an agreement between Joseph T. Williams and Sophie Williams, his wife, and Lafayette Joslyn (all of Hot Creek, Nye county, Nevada), as appears of record in Book A of Miscellany, pp. 420, 421, 422.

In witness whereof I have hereunto set my hand and affixed my official seal this 22d day of August, A. D. 1881.

[L. S.] M. R. DELANO,
County Recorder.

(Endorsed:) Copy of agreement between Jos. T. Williams and wife and Lafayette Joslyn. Dated April 13th, 1876.

426 Wm. F. Ernst to Jos. T. Williams.

This indenture, made the twentieth day of May, in the year of our Lord one thousand eight hundred and eighty, between Wm. F. Ernst, of Hot Creek, Nye county, Nevada, the party of the first part, and Joseph T. Williams, of the same place, the party of the second part, witnesseth:

That the said party of the first part, for and in consideration of the sum of one dollar, gold coin of the United States of America, to him in hand paid by the said party of the second part, the receipt whereof is hereby acknowledge, has granted, bargained, sold, and conveyed, and by these presents does grant, bargain, sell, and convey, unto the said party of the second part and to his heirs and assigns forever that certain piece, parcel, or lot of land situated in Hot Creek, Nye county, Nevada, and more particularly described as follows, viz: Being the S. ½ of S. W. ¼ of section 28 and E. ½ of S. E. ¼ of section 29, in township No. 8 north, of range No. 50 east, containing one hundred and sixty acres, together with all and singular the tenements, hereditaments, and appurtenances there-
427 unto belonging or in anywise appertaining, and the reversion and reversions, remainder and remainders, rents, issues, and profits thereof; to have and to hold all and singular the said premises, together with the appurtenances, unto the said party of the second part and to his heirs and assigns forever.

In witness whereof the said party of the first part has hereunto set his had and seal the day and year first above written.

W. F. ERNST. [SEAL.]

Signed, sealed, and delivered in the presence of—

——— ———.

STATE OF NEVADA, } ss:
County of Nye, }

On this twentieth day of May, A. D. one thousand eight hundred and eighty, personally appeared before me, N. S. Trowbridge, a notary public in and for the said county of Nye, Wm. F. Ernst, whose name is subscribed to the annexed instrument as a party thereto, personally known to me to be the same person described in and who executed the said annexed instrument as a party thereto, and the said Wm. F. Ernst duly acknowledged to me that he executed the same freely and voluntarily and for the uses and purposes therein mentioned.

428 In witness whereof I have hereunto set my hand and affixed my official seal the day and year in this certificate first above written.

N. S. TROWBRIDGE,
[SEAL.] *Notary Public.*

Recorded at the request of J. T. Williams June 10, 1880, at 39 min. past 8 p. m.

GEORGE ERNST, *Recorder.*

(Endorsed:) William F. Ernst to Joseph T. Williams. Copy. Deed. Dated May 20, 1880. 1882–16042–5.

429 This indenture, made the sixteenth day of September, in the year one thousand eight hundred and eighty-one, between Henry B. Stanton, as receiver of the New Philadelphia Silver Mining Company, duly appointed in an action hereinafter mentioned, party of the first part, and Franz O. Matthiessen and Lebbeus B. Ward, parties of the second part:

Whereas an order was made at a special term of the supreme court of the State of New York, held at the court-house, in the city of New York, on the fifteenth day of July, one thousand eight hundred and eighty, which is in the words and figures following, to wit:

"At a special term, at chambers, of the supreme court, held in and for the county of New York, at the court-house, in the city of New York, this 15th day of July, 1880.

"Present: Hon. Charles Donohue, justice.

"THE PEOPLE OF THE STATE OF NEW YORK
vs.
"THE NEW PHILADELPHIA SILVER MINING COMPANY.

"On reading and filing the summons and complaint herein, the affidavits of Lebbeus B. Ward, verified July 1st, 1880, and the affidavit of William E. Gilhooly, the order granting leave to sue, and the order to show cause herein, and after hearing the attorney
430 general for the motion and Messrs. Nash & Holt for the defendants in opposition thereto—

"It is ordered that Henry B. Stanton, counsellor-at-law, be, and he hereby is, appointed receiver of all the property and assets, real and personal, of The New Philadelphia Silver Mining Company, defendant herein, on his filing the usual receiver's bond in the sum of ten thousand dollars.

"It is further ordered that the hearing of the motion for the continuance of the injunction herein and for a permanent injunction and for the continuance of the receiver be, and hereby is, on the application of the defendant, adjourned to July 21st, 1880, at 10.30 a. m., at these chambers.

"The above appointment of the receiver is made without prejudice to the merits of the motion on the order to show cause herein, which is to be heard on the above adjourned day as if then originally returnable.

"C. DONAHUE, *J. S. C.*

"The within order approved as to form.
"July 15, '80.

"NASH & HOLT, *for Def'ts.*
"HAMILTON WARD,
"*Attorney General.*"

And whereas an order was made at a special term of said su-

preme court on the third day of August, one thousand eight hundred and eighty, which is in the words and figure- following, to wit:

"At a special term of the supreme court of the State of
431 New York, held at the court-house, in the city of New York, on the 3d day of August, 1880.

"Present: Hon. Charles Donohue, justice.

"THE PEOPLE OF THE STATE OF NEW YORK
ag'st
"THE NEW PHILADELPHIA SILVER MINING COMPANY.

"An order to show cause having been granted herein on the 7th day of July, 1880, why the injunction contained in said order to show cause should not be continued during the pendency of this action, and why a receiver should not be appointed to take possession of and hold during the pendency of this action all the property, effects, and rights of the defendant, wheresoever situated, with the general powers of a receiver, and why the plaintiff should not have such other and further relief as to the court should seem just and proper in the premises, and the motion on said order to show cause coming on to be heard—

"On reading and filing the said order to show cause, the summons and complaint, the petition of Hamilton Ward, attorney general of the State of New York, for leave to bring the action, the affidavits of Lebbeus B. Ward (2), Franz O. Matthiessen, and Henry Schmitt in favor of the defendant, and the affidavits of George D. Hyde, Alfred Kimber, John D. Hossack, William G. Smith, Henry H. Mason, and Richard Gluyas, and an affidavit of George D. Hyde,
N. E. Paine, William G. Smith, and John D. Hossack, and
432 the papers therein referred to and thereto annexed, in opposition to the motion, and after hearing Leon Abbett, Esq., on behalf of the attorney general of the State of New York, in favor of the motion, and John E. Parsons, Esq., in opposition thereto—

"It is ordered that the defendant, its officers, directors, servants, and employees, be, and they are hereby, enjoined and restrained from exercising any of the corporate rights, privileges, and franchises of the defendant and from paying out or in any way transferring or delivering to any person any of the moneys, property, or effects of the defendant, and from transacting any business in its behalf, or in any manner whatsoever interfering or meddling with the property, real or personal, of the defendant, wheresoever situated.

"And whereas by an order of this court dated July 15, 1880, made on the return of said order to show cause, Henry B. Stanton, a counsellor-at-law, was appointed receiver of all the property and assets, real and personal, of the defendant upon filing the usual receiver's bond in the sum of ten thousand dollars, which appointment was made without prejudice to the merits of the motion and was made as the condition of the adjournment of the motion contained in said order to show cause:

"It is hereby further ordered that Henry B. Stanton be, and he is hereby, continued as receiver of The New Philadelphia Silver

Mining Company, the defendant herein, and as such is to take possession of and hold all the real and personal property, effects, and rights of the defendant, wheresoever situated, with the general
433 powers of a receiver, and that the bond heretofore given by said receiver in the sum of $10,000 is hereby approved as sufficient and shall stand as the bond of said receiver under this order.

"It is further ordered that the defendant, by its proper officers, within three days after the service of this order upon the attorneys for the defendant, execute and deliver a proper deed of conveyance of all the real and personal property of the defendant situated in the State of Nevada to the said Henry B. Stanton, as receiver of the defendant.

"It is further ordered that the defendant, by its proper officers, within the time aforesaid, execute all other necessary deeds, instruments, and papers for the conveyance of all its real and personal property and effects situated in any other place in and outside of the State of New York.

"It is further ordered that the plaintiff have ten dollars, costs of this motion.

"CH. DONOHUE, *J. S. C.*"

And whereas the said New Philadelphia Silver Mining Company did, by a certain deed dated on the fifteenth day of April, one thousand eight hundred and eighty-one, and recorded on the fifth day of May, one thousand eight hundred and eighty-one, in the office of the recorder of Nye county, Nevada, in Liber K of Deeds, pages 474 to 483, inclusive, convey to the said Henry B. Stanton, receiver as aforesaid, all the real estate and personal property owned by said company;

And whereas an order was made at a special term of said
434 supreme court on the twenty-eight- day of July, one thousand eight hundred and eighty-one, which is in the words and figures following, to wit:

"At a special term of the supreme court of the State of New York, held at the court-house, in the city of New York, on the 28th day of July, 1881.

"Present: Hon. Abraham R. Lawrence, justice.

"In the Matter of the Application of FRANZ O. MATTHIESSEN for an Order Directing Henry B. Stanton, Receiver of the New Philadelphia Silver Mining Company, to Sell Property, &c.

"A motion having been made in the above matter for an order directing Henry B. Stanton, receiver of the New Philadelphia Silver Mining Company, appointed as such in a suit pending in the supreme court of the State of New York wherein The People of the State of New York are plaintiffs and The New Philadelphia Silver Mining Company is defendant, to sell forthwith all the property of said company of which he became possessed and all the right, title, and interest of said company in said property for the benefit of said company and its creditors, and that he pay to Franz O. Matthiessen

a certain judgment recovered by said Matthiessen on the 19th day of April, 1881, in the court of common pleas for the city and
435 county of New York against said company for the sum of $6,474.98, said motion being founded upon an order to show cause in the above matter, dated the 15th day of June, 1881, and returnable on the 22nd day of June, 1881, and the papers on said motion having been duly served upon Messrs. Man and Parsons, attorneys for the New Philadelphia Silver Mining Company in the suit of the people against said company, and upon Henry B. Stanton, receiver as aforesaid, and upon Hon. Hamilton Ward, attorney general, as directed by said order to show cause, and said motion having been adjourned from time to time at the request of William G. Smith, representing the New Philadelphia Silver Mining Company, until the 15th day of July, 1881, all the parties interested in said matter appearing in open court, to wit, Franz O. Matthiessen, by Abbott & Fuller, his attorneys; Henry B. Stanton, in person and by Henry Stanton, Esq., his counsel; the attorney general, by Sherman W. Kuerals, Esq., and William G. Smith, by H. L. Vilas, Esq., and it having been consented to by all the parties in open court and an order having been filed to the effect that said motion be submitted to Hon. A. R. Lawrence, justice of said court, and that the papers be served and mailed as therein directed, and the papers having been submitted to Mr. Justice Lawrence, as required by said order, with the briefs of the respective counsel:

436 "Now, on reading and filing the said order to show cause and the affidavits of Lebbeus B. Ward and Leon Abbett, verified the 13th of June, 1881; the affidavit of Franz O. Matthiessen, verified June 9th, 1881, and the orders and papers thereto annexed; also the affidavit of Lebbeus B. Ward, verified July 16th, 1881, and the papers thereto annexed, and the affidavit of Franz O. Matthiessen, verified July 16th, 1881; the affidavit of William E. Gilhooly, verified July 16th, 1881, and the affidavit of Henry B. Stanton, verified June 30th, 1881, in favor of said motion, and the affidavits of William G. Smith, verified July 1st, 1881, and July 18, 1881, in opposition thereto, and after considering the briefs of the respective counsel—

"It is ordered that Henry B. Stanton, receiver of the New Philadelphia Silver Mining Company, be, and he hereby is, directed to sell, at public auction, in the city of New York, on the sixteenth day of September, 1881, all the real and personal property of every description of said company of which he became possessed as such receiver, and all the right, title, interest, and equity of redemption of said company in and to said property, and that notice of said sale shall be published at least three times in the Daily Register and also in the World, two newspaper- published in the city of New York.

"And it is further ordered that out of the proceeds arising
437 from such sale, after paying the expenses thereof and his commissions and his legal expenses as receiver and such costs and allowances as shall be hereafter fixed by this court, the said receiver shall, out of the balance of such proceeds, if there be sufficient remaining in his hands for that purpose, pay to Franz O. Matthies-

sen the sum of $6,474.98, the amount of the judgment recovered by said Matthiessen on the 19th day of April, 1881, in the court of common pleas for the city and county of New York against the New Philadelphia Silver Mining Company, with interest on said sum of $6,474.98 from said 19th day of April, 1881; and if there be not sufficient proceeds remaining to pay said judgment in full, then said receiver shall pay the full amount of such balance remaining to said Matthiessen, and take his receipt therefor on account of said judgment. ("Endorsed: Filed Sept. 10th, 1881.")

[L. S.] "WM. A. BUTLER, *Clerk.*"

And whereas said receiver, in pursuance of the last-mentioned order, did, on the sixteenth day of September, one thousand eight hundred and eighty-one, sell at public auction, at the Exchange sales-room, No. 111 Broadway, in the city of New York, all the property, real and personal, of said New Philadelphia Silver Mining Company, wherever situated, and also all the right, title, interest, and equity of redemption of said company in and to said
438 property, due notice of the time and place of such sale being first given according to the terms of said order, at which sale all of said real and personal property and rights as aforesaid, including the premises hereinafter particularly described, were struck off to the said parties of the second part for the sum of five thousand dollars, that being the highest sum bidden for the same:

Now this indenture witnesseth: That the said receiver, in order to carry into effect the sale so made by him as aforesaid, and in pursuance of said order and decree of said court, and also in consideration of the premises and of said sum so bidden as aforesaid being first duly paid to him by the said parties of the second part, the receipt whereof is hereby acknowledged, hath granted, bargained, sold, and conveyed, and by these presents doth grant, bargain, sell, and convey, to the said parties of the second part, their heirs and assigns forever, all and singular the locations, location claims, mines, ten-stamp mill and water rights, and rights to use water now owned by said company, together with all the real estate owned by said company, with the buildings, structures, and improvements now upon the same, the said real estate being more particularly described as follows—that is to say: All that piece or parcel of land and mining claim, with all the right, title, and interest of the said party of the first part in and to the same, being mineral entry No.
439 222 in the series of the land office at Eureka, in the State of Nevada, designated by the surveyor general as lot No. 37, situated in the Hot Creek mining district, county of Nye and State of Nevada, in the district of land subject to sale at Eureka, containing five acres and fifty-one hundredths of an acre of land, more or less, and is bounded, described, and platted as follows, with magnetic variations fifteen degrees thirty minutes east, to wit: Beginning at a post marked "No. 1, U. S. survey No. 37, from which the centre of the West Rattlesnake spring bears north forty-three (43) degrees ten (10) minutes east at the distance of three hundred and thirteen (313) feet and the southwesterly corner of the Jacobson

stone cabin bears north two (2) degrees forty-five (45) minutes west at the distance of one hundred and seventy-eight and one-half (178½) feet, thence from said post No. 1 north forty-five (45) degrees west two hundred (200) feet to post marked "No. 2, U. S. survey No. 37;" thence north forty-five (45) degrees east twelve hundred (1,200) feet to post marked "No. 3, U. S. survey No. 37;" thence south forty-five (45) degrees east two hundred (200) feet to post marked "No. 4, U. S. survey No. 37," from which the location monument on the croppings bears west at the distance of one hundred and forty-one and one-half (141½) feet and the centre of the deep vertical shaft bears south eighty-two (82) degrees thirty (30) minutes west at the distance of one hundred and ten (110) feet; thence from said post No. 4 south forty-five (45) degrees west twelve hundred
440 (1,200) feet to the place of beginning, being mining claim or premises described in letters patent of the United States dated February 10th, 1876, granted to William G. Smith and Nicholas E. Paine, recorded in the General Land Office of the United States, numbered 1656, in vol. 19, pages 161 to 166, inclusive, and known and designated as the "New Philadelphia ledge and Co. lode," and conveyed by said Smith and Paine to said New Philadelphia Silver Mining Company by deed dated the sixth day of May, 1878, and recorded August 19th, 1878, in the office of the recorder of Nye county, State of Nevada, in Book J of Deeds, pages 268 and 269; also all that certain lot, piece, or parcel of land situate in Nye county, State of Nevada, and bounded and particularly described as follows, to wit: Commencing at the northeast corner of a certain corral in Hot Creek, Nye county, Nevada, known as the "Wall corral," running thence northwesterly to the southeast corner of the garden formerly belonging to Lafayette Joslyn and Charles Garrett; thence following the northerly line of said garden fence around and to the southwest corner of said garden; thence in a direct line with the line of said garden fence nearly south to the southerly line of northeast quarter section of section No. 33, of township 8 north, range 50 east, Mount Diablo meridian; thence easterly to an extended line of the easterly line of said Wall corral; thence northerly to the place of beginning, containing eighty acres
441 of land *of land*, more or less, being the property heretofore owned by Garrett and Joslyn and known as Garrett and Joslyn's station, at Hot Creek, Nye county, Nevada, and conveyed by said Lafayette Joslyn and Charles Garrett to N. S. Trowbridge by deed dated June 23rd, 1879, and recorded June 24th, 1879, in Book J of Deeds, pages 515, 516, and 517, of Nye county, Nevada, records, and conveyed by said Trowbridge to the said New Philadelphia Silver Mining Company by deed dated August 19th, 1879, and recorded in the office of the recorder of Nye county, Nevada, in Book I of Deeds, pages 639 and 640, on August 20th, 1879.

Also all the right, title, and interest of the party of the first part hereto in and to all that certain lot, piece, or parcel of land containing eighty acres, with the buildings, structures, and improvements erected thereon, including one ten-stamp quartz mill, together with the chimneys, furnaces, sheds, platforms, tanks, and all other structures

connected therewith, and the machinery and apparatus pertaining to said mill, and the steam-engine, boiler, shafting, pulleys, and belting therein used or provided for working the same, and all apparatus for raising or carrying and treating ores of silver or other metals by drying, roasting, crushing, stamping, or otherwise pulverizing the same, and for reducing and separating the metals from the same by amalgamation or other chemical or mechanical means, including assay
442 apparatus; also all supplies and tools of every kind and all spare materials or extra or duplicate parts of such apparatus and outfit as may be on hand as part of the equipment of said mill situated in Hot Creek, Nye county, Nevada, and more particularly described as follows, viz., being the east half of the southeast quarter of section thirty-three, township eight north, range fifty east, Mount Diablo meridian, together with the water rights, comprising the exclusive use or right to use all the water needed to supply such mills or other metallurgical works as are or may be erected on said premises or for domestic, smelting, milling, mining, or other uses in the prosecution of the business of milling and mining, said water to be taken from the streams and springs upon the ranch or lands of said Joseph T. Williams, known as the Hot Creek ranch, and springs of Hot Creek, Nye county, Nevada, and to be conveyed in pipes to said premises and reduction works, being the same premises conveyed to the New Philadelphia Silver Mining Company by said Joseph T. Williams by deed dated July 26, 1879, and recorded in the office of the recorder of Nye county, Nevada, in Book J of Deeds, at pages 534 and 535, on July 29th, 1879; also all the right, title, and interest of the party of the first part of, in, and to a certain mining claim location and mining rights known as the "J. T. Rooke mine,"
443 formerly known as the "Woodbine Claim and Company," situated at the time of its location in the Hot Creek mining district, Nye county, Nevada, said location measuring twelve hundred (1,200) feet in length along the croppings bearing slightly west of north from the location monument and across the lead three hundred (300) feet on each side of said monument and lode, said location monument being situated near Rattlesnake cañon on the boundary line of the New Philadelphia silver mine between posts No-. 2 and 3, and is three hundred (300) feet from post No. 3. The eastern boundary of this claim is the extension in a northerly direction of the eastern boundary posts Nos. 3 and 4 of the New Philadelphia mine, running twelve hundred (1,200) feet as aforesaid from said post No. 3, said location being a relocation of the Woodbine claim, and was made by Alfred Kimber August 26th, 1878, and the notice thereof filed and recorded in the records of said district August 30th, 1878, which property and mining rights were conveyed to the said New Philadelphia Silver Mining Company by Alfred Kimber by deed dated February 17th, 1879, and recorded August 19th, 1879, in Book P of Deeds, at pages 636 to 638, inclusive, of the Nye county, Nevada, records.

Also all the right, title, and interest of the party of the first part of, in, and to a certain mining claim and location known as the

stone cabin bears north two (2) degrees forty-five (45) minutes west at the distance of one hundred and seventy-eight and one-half (178½) feet, thence from said post No. 1 north forty-five (45) degrees west two hundred (200) feet to post marked "No. 2, U. S. survey No. 37;" thence north forty-five (45) degrees east twelve hundred (1,200) feet to post marked "No. 3, U. S. survey No. 37;" thence south forty-five (45) degrees east two hundred (200) feet to post marked "No. 4, U. S. survey No. 37," from which the location monument on the croppings bears west at the distance of one hundred and forty-one and one-half (141½) feet and the centre of the deep vertical shaft bears south eighty-two (82) degrees thirty (30) minutes west at the distance of one hundred and ten (110) feet; thence from said post No. 4 south forty-five (45) degrees west twelve hundred
440 (1,200) feet to the place of beginning, being mining claim or premises described in letters patent of the United States dated February 10th, 1876, granted to William G. Smith and Nicholas E. Paine, recorded in the General Land Office of the United States, numbered 1656, in vol. 19, pages 161 to 166, inclusive, and known and designated as the "New Philadelphia ledge and Co. lode," and conveyed by said Smith and Paine to said New Philadelphia Silver Mining Company by deed dated the sixth day of May, 1878, and recorded August 19th, 1878, in the office of the recorder of Nye county, State of Nevada, in Book J of Deeds, pages 268 and 269; also all that certain lot, piece, or parcel of land situate in Nye county, State of Nevada, and bounded and particularly described as follows, to wit: Commencing at the northeast corner of a certain corral in Hot Creek, Nye county, Nevada, known as the "Wall corral," running thence northwesterly to the southeast corner of the garden formerly belonging to Lafayette Joslyn and Charles Garrett; thence following the northerly line of said garden fence around and to the southwest corner of said garden; thence in a direct line with the line of said garden fence nearly south to the southerly line of northeast quarter section of section No. 33, of township 8 north, range 50 east, Mount Diablo meridian; thence easterly to an extended line of the easterly line of said Wall corral; thence northerly to the place of beginning, containing eighty acres
441 of land *of land*, more or less, being the property heretofore owned by Garrett and Joslyn and known as Garrett and Joslyn's station, at Hot Creek, Nye county, Nevada, and conveyed by said Lafayette Joslyn and Charles Garrett to N. S. Trowbridge by deed dated June 23rd, 1879, and recorded June 24th, 1879, in Book J of Deeds, pages 515, 516, and 517, of Nye county, Nevada, records, and conveyed by said Trowbridge to the said New Philadelphia Silver Mining Company by deed dated August 19th, 1879, and recorded in the office of the recorder of Nye county, Nevada, in Book I of Deeds, pages 639 and 640, on August 20th, 1879.

Also all the right, title, and interest of the party of the first part hereto in and to all that certain lot, piece, or parcel of land containing eighty acres, with the buildings, structures, and improvements erected thereon, including one ten-stamp quartz mill, together with the chimneys, furnaces, sheds, platforms, tanks, and all other structures

connected therewith, and the machinery and apparatus pertaining to said mill, and the steam-engine, boiler, shafting, pulleys, and belting therein used or provided for working the same, and all apparatus for raising or carrying and treating ores of silver or other metals by drying, roasting, crushing, stamping, or otherwise pulverizing the same, and for reducing and separating the metals from the same by amalgamation or other chemical or mechanical means, including assay
442 apparatus; also all supplies and tools of every kind and all spare materials or extra or duplicate parts of such apparatus and outfit as may be on hand as part of the equipment of said mill situated in Hot Creek, Nye county, Nevada, and more particularly described as follows, viz., being the east half of the southeast quarter of section thirty-three, township eight north, range fifty east, Mount Diablo meridian, together with the water rights, comprising the exclusive use or right to use all the water needed to supply such mills or other metallurgical works as are or may be erected on said premises or for domestic, smelting, milling, mining, or other uses in the prosecution of the business of milling and mining, said water to be taken from the streams and springs upon the ranch or lands of said Joseph T. Williams, known as the Hot Creek ranch, and springs of Hot Creek, Nye county, Nevada, and to be conveyed in pipes to said premises and reduction works, being the same premises conveyed to the New Philadelphia Silver Mining Company by said Joseph T. Williams by deed dated July 26, 1879, and recorded in the office of the recorder of Nye county, Nevada, in Book J of Deeds, at pages 534 and 535, on July 29th, 1879; also all the right, title, and interest of the party of the first part of, in, and to a certain mining claim location and mining rights known as the "J. T. Rooke mine,"
443 formerly known as the "Woodbine Claim and Company," situated at the time of its location in the Hot Creek mining district, Nye county, Nevada, said location measuring twelve hundred (1,200) feet in length along the croppings bearing slightly west of north from the location monument and across the lead three hundred (300) feet on each side of said monument and lode, said location monument being situated near Rattlesnake cañon on the boundary line of the New Philadelphia silver mine between posts No-. 2 and 3, and is three hundred (300) feet from post No. 3. The eastern boundary of this claim is the extension in a northerly direction of the eastern boundary posts Nos. 3 and 4 of the New Philadelphia mine, running twelve hundred (1,200) feet as aforesaid from said post No. 3, said location being a relocation of the Woodbine claim, and was made by Alfred Kimber August 26th, 1878, and the notice thereof filed and recorded in the records of said district August 30th, 1878, which property and mining rights were conveyed to the said New Philadelphia Silver Mining Company by Alfred Kimber by deed dated February 17th, 1879, and recorded August 19th, 1879, in Book P of Deeds, at pages 636 to 638, inclusive, of the Nye county, Nevada, records.

Also all the right, title, and interest of the party of the first part of, in, and to a certain mining claim and location known as the

Harmony Mining Company or Harmony mine (formerly the
444 J. T. Rook mine), situated near the spring in Rattlesnake cañon, in the Hot Creek mining district, Nye county, Nevada, and bounded on the north by the Lowden and Broadway mine and on the east by the New Philadelphia mine, being a surface location one thousand (1,000) feet long and six hundred (600) feet wide, said claim having been located by the New Philadelphia Silver Mining Company January 1st, 1880, the record of which is to be found on folio 292 of Book B of the Hot Creek mining district, Nye county, Nevada, under date January 2, 1880, a notice of which location was filed for record on the ground January 1st, 1880.

Also all the right, title, and interest of the party of the first part of, in, and to a certain mining claim and location known as the N. E. Paine mine or N. E. Paine claim, formerly known as the "Commodore ledge and claim," situate in Hot Creek mining district, Nye county, Nevada, and measuring fifteen hundred (1,500) feet along the croppings from the location monument and across the croppings three hundred (300) feet in width on each side of said monument and lode, forming a parallelogram fifteen hundred (1,500) feet in length and six hundred (600) feet in width, running in a southeasterly direction, the eastern boundary of which is the western boundary of the New Philadelphia Silver Mining Company's boundary extended two hundred (200) feet from each of posts Nos.
445 1 and 2. The location monument aforesaid is situated in Rattlesnake cañon midway between posts Nos. 1 and 2 of the western boundary of the New Philadelphia Silver Mining Company's property, said claim being a relocation of the "Commodore ledge and claim." The location of said N. E. Paine claim was made by Alfred Kimber August 26th, 1878, and the notice thereof recorded and filed August 30th, 1878, in the records of said Hot Creek mining district, which said mining property and mining rights were conveyed to the New Philadelphia Silver Mining Company by Alfred Kimber on the 17th of February, 1879, by deed of that date, which was recorded August 19th, 1879, in Book P of Deeds, at pages 636, 637, and 638, of Nye county, Nevada, records.

Also all the right, title, and interest of the party of the first part of, in, and to a certain mining claim and location known as the Missouri Mining Company or Missouri mine (formerly known as the N. E. Paine mine), situated on the south side of Rattlesnake cañon about one hundred (100) yards above the spring in Rattlesnake cañon, in Hot Creek mining district, Nye county, Nevada, being a surface location fifteen hundred (1,500) feet long and six hundred (600) feet wide, located by the New Philadelphia Silver Mining Company January 8th, 1880, the record whereof is to be found on folio
446 294 of Book B of Hot Creek mining district, Nye county, Nevada, under date of January 9th, 1880, a notice of which location was filed for record on the ground on January 8th, 1880; also all the right, title, and interest of the party of the first part of, in, and to a certain mining claim and location and mining rights known as the "Hercules Silver Mining Company" or "Hercules mine," situated at the time of its location in the Argenta mining

district, Nye county, Nevada, said location measuring along the lead or lode six hundred (600) feet in length from the location monument and across the lode three hundred (300) feet in width on each side of said monument the whole length of the six hundred (600) feet, thereby making a surface location six hundred (600) feet long and six hundred (600) feet wide, said location monument being situated near Rattlesnake cañon, Nye county, Nevada, one hundred and fifty (150) feet in a southeasterly direction from post "No. 4, U. S. survey No. 37." Said location was made by Alfred Kimber and a notice thereof filed for record on the ground November 17th, 1878, and recorded on the same day at page 22 of Records of the aforesaid Argenta mining property, which property and mining rights were conveyed to the New Philadelphia Silver Mining Company by Alfred Kimber by deed dated September 20th, 1879.

447 Also all the right, title, and interest of the party of the first part of, in, and to a certain mining claim and location known as the Oregon Mining Company or Oregon mine (formerly the Hercules Silver Mining Company), situate near the spring in Rattlesnake cañon, Hot Creek mining district, Nye county, Nevada, being a surface location of six hundred (600) feet square, located by the New Philadelphia Silver Mining Company January 1st, 1880, the record whereof is to be found on folio 291 of Book B of Records of the Hot Creek mining district of Nye county, Nevada, under date of January 2nd, 1880, a notice of which location was filed for record on the ground January 1st, 1880.

Also all the right, title, and interest of the party of the first part of, in, and to a certain mining claim and mining rights known as the Lulu Silver Mining Company or Lulu mine, situated at the time of its location in the Argenta mining district, Nye county, Nevada, said location measuring along the mineral-bearing lead or lode eleven hundred and ninety (1,190) feet in a southerly direction and ten (10) feet in a northerly direction from the location monument and across the lode three hundred (300) feet in width on each side of said monument and of said lode throughout the whole length of the twelve hundred (1,200) feet, thereby making a surface lo-

448 cation of twelve hundred (1,200) feet long and six hundred (600) feet wide, said location monument being situated near Rattlesnake cañon, Nye county, Nevada, and is the extended boundary line lying in an easterly direction of U. S. survey No. 37 two hundred and thirteen (213) feet, thence in a southerly direction ten (10) feet to location monument, which location was made by Alfred Kimber, and the notice thereof was filed for record on the ground November 7th, 1878, and recorded same day at page 23 of Records of the aforesaid Argenta mining district, and the property and mining rights were conveyed to the New Philadelphia Silver Mining Company by Alfred Kimber by deed dated September 20th, 1879; also all the right, title, and interest of the party of the first part of, in, and to a certain mining claim and location known as the Rapidan Mining Company or Rapidan mine (formerly known as the Lulu Mining Company or Lulu mine), measuring eleven hundred and ninety (1,190) feet along the lode in a southerly direction and ten

(10) feet in a northerly direction from the location monument and across the lode three hundred (300) feet on each side of said monument, said location monument being situate ten (10) feet south of post No. 38, about three hundred (300) feet south of the spring in Rattlesnake cañon, in Hot Creek mining district, Nye county,
Nevada, being a surface location of twelve hundred (1,200)
449 feet long and six hundred (600) feet wide, located by the New
Philadelphia Silver Mining Company January 3rd, 1880, the record whereof is to be found on folio 293 of Book B of the Records of Hot Creek mining district, Nevada, under date of January 4th, 1880, a notice of which location was filed for record on the ground January 3rd, 1880.

Also all the right, title, and interest of the party of the first part of, in, and to that certain mining claim and property known as the Resumption mining claim or Resumption mine, and more particularly described as follows, viz., consisting of fifteen hundred (1,500) feet in length and six hundred (600) feet in width, and situated at the time of its location in Argenta mining district, Nye county, Nevada, about thirty-five hundred (3,500) feet in a northerly direction from the Bullion mine, in said district, measuring along the mineral-bearing lead or ledge four hundred (400) feet in a northerly direction and eleven hundred (1,100) feet in a southerly direction from the location monument and across the lead or ledge three hundred (300) feet in width on each side of the monument and ledge, running the whole length of the fifteen hundred (1,500) feet. Said location monument is situated north of Rattlesnake cañon, Nye county, Nevada, and north of post No. 3, U. S. survey No. 37, and is
distant thirty-five hundred (3,500) feet northwesterly from the
450 location monument of the Bullion mine, said Resumption
mining claim having been located on the first day of January, A. D. 1879, and notice thereof filed for record on the ground the same day and duly recorded April 12th, 1879, as appears from the mining records of said district, on page 30, Book A of said records, being the same property conveyed by Ewald Kipp to Herman Andersen by deed dated September 6th, 1879, and recorded November 5th, 1879, in Book K of Deeds, pages 108 to 110, of the records of Nye county, Nevada, and conveyed to the New Philadelphia Silver Mining Company by H. Andersen by deed dated October 29th, 1879, and recorded in the office of the recorder of Nye county, Nevada, on November 5th, 1879, in Book K of Deeds, pages 110, 111, and 112; also all the right, title, and interest of the party of the first part of, in, and to a certain mining claim known as the May Be So mine, formerly known as the Resumption mine, situated about one-half ($\frac{1}{2}$) mile northerly from the Vaquero mine, said location measuring from the location monument along the ledge or vein seven hundred and fifty (750) feet northerly and seven hundred and fifty (750) feet southerly, across the ledge three hundred (300) feet easterly and three hundred (300) feet westerly,
thereby making a surface location of fifteen hundred (1,500)
451 feet long and six hundred (600) feet wide. Said location
was made as a relocation of the Resumption mine by Wil-

liam Lenwitt January 1, 1881, and notice thereof was filed for record on the ground January 17, 1881, and recorded at page 309, Book B of Records of Hot Creek mining district, Nye county, Nevada, which property and mining rights were conveyed to the New Philadelphia Silver Mining Company by William Lenwitt by deed dated January 26, 1881, and recorded January 31, 1881, in Book K of Deeds, pages 415, 416, Nye county, Nevada, records.

Also all that certain mining property and mining rights situate in Hot Creek and Argenta mining districts, Nye county, State of Nevada, being twelve hundred (1,200) feet in length on the croppings, running in a northeasterly direction from a monument hereafter described; also one hundred and forty (140) feet in width in a southeasterly direction and three hundred (300) feet in width in a northwest direction from said monument, thereby making a surface location of twelve hundred (1,200) feet long and four hundred and forty (440) feet wide. This monument is situated near Rattlesnake cañon, Nye county, Nevada, five hundred and forty (540) feet in a northwesterly direction from post No. 4 of United States survey No. 37. This mining claim is recorded on the books of the Argenta mining district as the "Lowden Silver Mining Company," page 21, November 13, 1878, being
452 the same property conveyed to the New Philadelphia Silver Mining Company by Herman Anderson by deed dated August 15, 1879.

Also all the right, title, and interest of the party of the first part of, in, and to a certain mine or mining claim known as the Copper Knob mine, formerly the Lowden silver mine, situate in Hot Creek mining district, Nye county, Nevada, about one thousand (1,000) feet northwesterly from the New Philadelphia Silver Mining Company's hoisting works, said location measuring from the location monument along the ledge or vein seven hundred and fifty (750) feet northerly and seven hundred and fifty (750) feet southerly and across the ledge three hundred (300) feet easterly and three hundred (300) feet westerly, making a surface location of fifteen hundred (1,500) feet in length and six hundred (600) feet in width. Said location was made on January 1, 1881, as the Copper Knob mine by William Lenwitt and notice thereof filed for record on the ground January 17, 1881, and recorded at page 308 of Records of Hot Creek mining district, Nye county, Nevada, which property and mining rights were conveyed to the New Philadelphia Silver Mining Company by William Lenwitt by deed dated January 26, 1881, and recorded on January 31, 1881, in Book K of Deeds, pages 415, 416, of Nye county, Nevada, records; also all the right, title, and interest of the party of the first part of, in, and to a certain mining claim and location known as the Huron mine, situated in
453 the Hot Creek mining district, Nye county, Nevada, about three (3) miles south of Hot Creek and near the mouth or outlet of Old Dominion cañon, being a surface location of fifteen hundred (1,500) feet long by six hundred (600) feet wide, said claim having been located by the New Philadelphia Silver Mining Company January 10, 1880, the record of which is to be found on folio

298 of Book B of the Hot Creek mining district, Nye county, Nevada, under date January 11th, 1880, a notice of which location was filed for record on the ground on January 10th, 1880.

And also all that certain mining property and mining rights, situated in Hot Creek mining district, county of Nye and State of Nevada, known as the "Ophir Silver Mining Company" or "Ophir mine" and formerly known as the "Why Not mine," being one thousand (1,000) feet in length on the mineral-bearing lead or lode, measuring from the location monument seven hundred and forty-five (745) feet in a northeasterly direction and two hundred and fifty-five (255) feet in a southwesterly direction along the mineral-bearing lead or lode and measuring across the same three hundred (300) feet in a southeasterly and one hundred and ten (110) feet in a northwesterly direction from said monument and running the whole length of the one thousand (1,000) feet, thereby making a surface loca-
454 tion of one thousand (1,000) feet long and four hundred and ten (410) feet wide, which said location monument is situated near Rattlesnake cañon, Nye county, Nevada, and is on the extended boundary line lying in a northeasterly direction in United States survey No. 37, post No. 4, eight hundred (800) feet to a point on the boundary line of the Broadway location, which location of said Ophir Silver Mining Company or Ophir mine was made by Edward Culver, and the notice whereof was filed for record on the ground on January 10, 1880, and recorded January —, 1880, in Book B of the Records of the said Hot Creek mining district, at folio 300, and which property and mining rights were conveyed to the New Philadelphia Silver Mining Company by Edward Culver by deed dated January 4, 1880, and recorded June 6, 1881, in Book K of Deeds, at pages 501, 502, 503, Nye county, Nevada, records.

Also all the right, title, and interest of the party of the first part of, in, and to a certain mining claim and location called and known as the Alturas mine, situated about one-half (½) mile from Rattlesnake spring, on what is known as Keystone Mountain, being at the time of its location in the Argenta mining district, Nye county, Nevada, said location measuring from the location monument twelve hundred (1,200) feet southerly and three hundred
455 (300) feet northerly along the lode or lead and measuring across the lode or lead three hundred (300) feet easterly and three hundred (300) feet westerly the whole length of the location, making a surface location of fifteen hundred (1,500) feet long and six hundred (600) feet wide, located by the New Philadelphia Silver Mining Company, notice of which location was filed for record on the ground on August 22, 1879, and recorded at page 33 of the Argenta mining district records and copied into Book B of Hot Creek mining records, page 312, on March 1, 1881.

Also all the right, title, and interest of the party of the first part of, in, and to a certain mining claim and location known as the Boston mine, situated on Keystone Mountain, in Hot Creek mining district, Nye county, Nevada, and is bounded on the north by the Alturas mine, one-half (½) mile south of Rattlesnake cañon, being a surface location of fifteen hundred (1,500) feet long and six hun-

dred (600) feet wide, and located by the New Philadelphia Silver Mining Company January 8, 1880, the record whereof is to be found on folio 295 of Book B of the Hot Creek mining district, Nye county, Nevada, under date January 9, 1880, a notice of which location was filed for record on the ground on January 8th, 1880.

456 Also all the right, title, and interest of the party of the first part of, in, and to a certain mining claim and location known as the Crystal mine (formerly the Keystone mine), situate on what is known as Keystone Mountain, about one (1) mile southwest from the Rattlesnake Cañon spring, in the Hot Creek mining district, Nye county, Nevada, being a surface location of fifteen hundred (1,500) feet long and six hundred (600) feet wide, located by the New Philadelphia Silver Mining Company January 8th, 1880, the record whereof is to be found on folio 296 of Book B of the Hot Creek mining district, Nye county, Nevada, under date of January 9, 1880, a notice of which location was filed for record on the ground on January 8th, 1880.

Also all the right, title, and interest of the party of the first part of, in, and to a certain mining claim and location known as the Superior mine, situate on top of Keystone Mountain, one (1) mile southwest of Rattlesnake Cañon spring, in Hot Creek mining district, Nye county, Nevada, being a surface location of fifteen hundred (1,500) feet long and six hundred (600) feet wide, and located by the New Philadelphia Silver Mining Company January 10, 1880, and the record whereof is contained on folio 299 of Book B of Hot Creek mining district, Nye county, Nevada, dated January 11, 1880, a notice of which location was filed for record on the ground January 10, 1880; also all the right, title, and interest of the party of

457 the first part of, in, and to a certain mining claim and location known as the Chieftain mine, situated in the Hot Creek mining district, Nye county, Nevada, being a surface location fifteen hundred (1,500) feet long and six hundred (600) feet wide, bounded on the east by the Boston and Alturas mines and located by the New Philadelphia Silver Mining Company January 8, 1880, and the record whereof is contained in folio 297 of Book B of the Records of the Hot Creek mining district, Nye county, Nevada, January 9th, 1880, a notice of which location was filed for record on the ground on January 8th, 1880.

Also all the right, title, and interest of the party of the first part of, in, and to all that certain tract of land situate, lying, and being in Rattlesnake cañon, Nye county, Nevada, and known as survey No. 935 of Nye county and recorded in Book B of Surveys, on page No. 341, and more particularly described in said survey as follows (magnetic variation sixteen and one-half (16½) degrees east): Beginning at No. 1, a blazed cedar tree on south side of Rattlesnake cañon, and running thence (1) north 87¾° east 13,600 chains to station No. 2, the southwest corner of section 21, township 7 north, range 50 east, Mount Diablo meridian; thence (2) north 500 chains to station No. 3, a monument; thence (3) north 87° west 106.30 chains to station No. 4, being post No. 4 of U. S. survey No. 37;

thence (4) south 35½° west 16.75 chains to post No. 5, the
458 same being post No. 1 of U. S. survey No. 38; thence (5) north 63¼° west 15.15 chains to post No. 6, being post No. 4 of U. S. survey No. 38; thence (6) south 36° west 1,100 chains to place of beginning, containing 124.30 acres, being the same property conveyed to the New Philadelphia Silver Mining Company by Alfred Kimber by deed dated October 4, 1878, and recorded in the office of the recorder of Nye county, Nevada, in Book J of Deeds, pages 321 and 322, on October 5th, 1878.

Also all the right, title, and interest of the party of the first part of, in, and to all that certain lot, piece, or parcel of land situate in Nye county, Nevada, in Rattlesnake cañon, about ten (10) miles north from Tybo, in Nye county, Nevada, surveyed for J. T. Rook for agricultural, grazing, wood, water, and other purposes, bounded and described as follows, viz., bearings expressed from a true meridian—magnetic variation, sixteen and one-half degrees east: Beginning at No. 1, a monument about eighty rods northwest of head of Narrow cañon, about one-half mile southwest of hoisting works of the New Philadelphia Silver Mining Company in Rattlesnake cañon, Nye county, Nevada, running forty chains south fifty-two degrees west to No. 2 monument, on north slope of hill; thence forty chains south thirty-eight degrees east along north side and ridge of summit overlooking basin to No. 3 monument; thence forty chains north
459 fifty-two degrees east to monument No. 4, on south slope of hill; thence north thirty-eight degrees west along west boundary of survey made for H. R. Lownsberg to place of beginning, containing one hundred and sixty acres of land and known as survey No. 937, & said survey being recorded in Book B of Surveys, page 343, of Nye county, Nevada, records, on November 5th, 1878, being the same premises conveyed to the New Philadelphia Silver Mining Company by J. T. Rook by deed dated October 22, 1878, and recorded in the office of the recorder of Nye county, Nevada, in Book J of Deeds, at pages 363 and 364, on November 5th, 1878.

Also all the right, title, and interest of the party of the first part of, in, and to all that certain tract of land situated in Nye county, State of Nevada, in Rattlesnake cañon, about ten miles north from Tybo, Nye county, Nevada, bounded and described as follows, viz., bearings expressed from a true meridian—magnetic variation, sixteen and one-half degrees east: Beginning at No. 1, a tall pine tree on north side of Narrow cañon, about one-quarter mile southwest from the hoisting works of the New Philadelphia Silver Mining Company, in Rattlesnake cañon, running south fifty-two degrees west; thence fifty-five chains along bed of cañon to monument No. 2 and bluff at head of cañon; thence south thirty-eight degrees east twenty-nine and nine one-hundredth chains to No. 3 monument,
460 on east side of summit of wooded hill; thence north fifty-two degrees east fifty-five chains along east side of summit to No. 4 monument; thence north thirty-eight degrees west twenty-nine and nine one-hundredth chains to the place of beginning, containing one hundred and sixty acres of land and known as survey No. 938, &c., said survey being recorded in Book B of Surveys, page 342, of Nye county,

Nevada, records on November 1st, 1878, being the same property conveyed to the New Philadelphia Silver Mining Company by H. R. Lownsberg by deed dated October 22, 1878, and recorded in the office of the recorder of Nye county, Nevada, on the 1st November, 1878, in Book J of Deeds, pages 359 and 360; also all that certain lot, piece, or parcel of land situate, lying, and being in the Hot Creek mining district, county of Nye and State of Nevada, and bounded and particularly described as follows, to wit (magnetic variation, sixteen and one-half degrees east): Beginning at No. 1, a pine tree on White point seven and twelve one-hundredth chains east of cabin, running thence due south forty chains to monument No. 2, at base of steep bench; thence due west forty chains to monument No. 3, near summit of wooded hill; thence due north forty chains to tree No. 4, on low hill near road; thence due east forty chains to
461 place of beginning, containing one hundred and sixty acres, being survey No. 944 of Nye county surveys and recorded in Book B of Surveys, page 346, Nye county records, and more particularly described by said survey, being the same property conveyed to the New Philadelphia Silver Mining Company by Henry E. Stammers by deed dated November 26, 1878, and recorded December 18, 1878, in the office of the recorder of Nye county, Nevada, in Book J of Deeds, pages 627 and 628.

Also all that piece, parcel, or lot of land situate, lying, and being in the Hot Creek mining district, county of Nye and State of Nevada, two miles west from Argenta, Nevada, bounded and described as follows, to wit (magnetic variation, sixteen and one-half degrees east): Beginning at No. 1, a monument near Tybo and Argenta road and north thirty degrees west eighty rods distant from northwest corner of survey of H. E. Stammer's ranch, running thence north forty-five degrees west forty chains to monument No. 2, in flat near foot of low hill; thence north forty-five degrees east forty chains along base of low hill to monument No. 3; thence south forty-five degrees east forty chains; thence south forty-five degrees west forty chains to place of beginning, containing one hundred and sixty acres, being survey No. 945 of Nye county surveys and recorded November 23rd, 1878, in Book B of Surveys, page 347, Nye
462 county records, and more particularly described by said survey, being the property conveyed to the New Philadelphia Silver Mining Company by Florenz Mayer by deed dated November 26, 1878, and recorded December 18, 1878, in Book I of Deeds, pages 625 and 626, of the records of Nye county, Nevada.

Also all that certain lot, piece, or parcel of land situate, lying, and being in the Hot Creek mining district, county of Nye and State of Nevada, three-eighths of a mile east from Argenta, Nye county, Nevada, and bounded and described as follows, to wit (magnetic variation, sixteen and one-half degrees east): Beginning at No. 1, a pine tree near Prospect Hole, due north of a point thirty chains distant from post No. 4 of Nye county survey No. 935, running thence due east forty chains to monument No. 2, near Hot Creek and Argenta road; thence due south forty chains to No. 3, a monument near mouth of cañon; thence due west forty chains to No. 4, a

monument near rocky bench; thence due north forty chains to place of beginning, containing one hundred and sixty acres, exclusive of portion of A. Kimber's survey No. 935, being Nye county survey No. 946, *recovered* November 16th, 1878, on page 345 of Book B of Surveys, Nye county records, and more particularly described in said survey, being the same property conveyed to the New Philadelphia Silver Mining Company by Herman Adresen by deed dated November 26, 1878, and recorded in the office of the recorder of Nye county, Nevada, in Book I of Deeds, pages 626 and 627.

463 Also all the right, title, and interest of the party of the first part of, in, and to a certain tract of land situate in Rattlesnake cañon, Nye county, Nevada, containing one hundred and sixty acres, located for mining purposes, mill site, or as a town site by Alfred Kimber, said claim being within the boundary of the posts set and notices placed upon them, subject, so far as area goes, to the county surveyor's measurement, notice of location whereof is dated August 12, 1878.

And also all the right, title, and interest of said party of the first part in and to all structures, improvements, hoisting and pumping works, cabins, railroad tracks, platforms, machinery and engines, steam-engines, tools, machinery of every kind, chemicals, supplies, and equipments, together with all ore heretofore mined or raised by said New Philadelphia Silver Mining Company or heretofore owned by said company or in which it had any interest whatever or in anywise belonging or appertaining to said company's said mines, mills, and property, and all privileges, rights, and franchises heretofore owned by said company.

And also all the dips, spurs, and angles in and on all and each of said mines or claims, and also all the metals and ores of every description, including gold and silver bearing quartz rock and earth therein or thereon, and all the rights, privileges, and

464 franchises thereto incident, appended, and appurtenant or therewith usually had and enjoyed; and also all the right, title, and interest of said party of the first part in and to the waters of a certain spring of drinking water situated in the northeast quarter of the northwest quarter of section 33, township 8 north, range 50 east, Mount Diablo meridian, on the land entered by J. T. Williams as a homestead December, 1875, and the right to convey the said water through the said homestead property of said Williams or of any other person or party by means of pipes or otherwise, and also in and to the line of pipes and all that may be used hereafter to replace the same now used to convey the water of said spring to the land and premises conveyed by said W. S. Trowbridge to said company by deed dated August 19, 1879; also the right to convey and use the waters of Hot creek for agricultural and irrigating purposes and other beneficial purposes to and upon the said premises so conveyed by said Trowbridge, together with all the other water rights and rights to use water appurtenant to said land so conveyed to said company by said Trowbridge.

Also all the real and personal property conveyed by said New

Philadelphia Silver Mining Company to the party of the first part to this deed by deed dated April 15, 1881, recorded in Liber
465 K of Deeds, pages 474 to 483, inclusive, of Nye county, Nevada, records, on the 5th day of May, 1881.

Also all the right, title, interest, demand, property, claim, and possession of every description of said company in and to the main hot spring in Hot Creek cañon, in or near the southeast quarter of section 29, township 8 north, range 50 east, Mount Diablo meridian, which is the principal supply of water to Hot creek, and in and to the waters issuing therefrom, and in and to all creeks, springs, wells, and waters of every description situate in Hot Creek mining district and Argenta mining district, and elsewhere in Nye county, Nevada; also all the right, title, interest, and property of said company as the first appropriator of water in the mining districts in Nye county aforesaid, either by itself or its grantors or those from whom they derived title, where the water has been or is to be conveyed to any land or mill or any mines or mining locations now or at any time heretofore appropriated, acquired, held, owned, used, or possessed by said company for mining, metallurgical, manufacturing, agricultural, irrigating, or other beneficial purposes; also all the right, title, interest, and property of said company to all ditches, canals, flumes, pipes, reservoirs, or other means of conveyance, distribution, storage, or use of water heretofore constructed by
466 said company or any of its grantors or parties from whom they may have derived title, and also the right of way therefor and the right to enter upon all lands in said county necessary to keep the same in proper and good repair, and to cause and maintain a full and free flow of water to the mill and other property of said company in Hot Creek cañon for drinking purposes, and for any or all of the other purposes aforesaid; also the right and power of said company to construct, erect, excavate, lay, and use ditches, canals, flumes, pipes, and other modes of conveyances of water not already made or constructed, which said company may have a right to construct, erect, excavate, lay, and use as aforesaid; also the right and title of said company in and to any and all rights of way over any and all lands in said county for the purpose of constructing, building, erecting, excavating, laying, and using pipes, canals, flumes, ditches, reservoirs, or other mode of conveying, using, or storing water not already constructed wherever said company may have a right to do; also the right of said company to use any of the waters in Hot Creek cañon, Rattlesnake cañon, or elsewhere in Nye county for any of the purposes aforesaid; also all the vested and accrued and other water rights and rights to creeks, springs, wells, and reservoirs in connection with any of the creeks, springs, wells,
467 or waters aforesaid now owned by said company, whether acquired by appropriation, contract, or by conveyance, or in accordance with the local customs, laws, and decisions applicable to the mining districts where the same lie; also all water appropriated by said company or any of its grantors or those from whom they may have derived title for desert lands for purposes of irrigation and reclamation.

Also all rights owned by said company to ditches and waters and the right of way over lands acquired by recording in survey books of Nye county, Nevada, maps of such ditches or claims for waters flowing from any spring, well, or stream; also all tunnel rights of said company, whether acquired by said company directly or by its grantors or those from whom they derived title or appurtenant to or arising from any of the mines or mining locations or rights owned or controlled by said company; and also all and singular the tenements, hereditaments, and appurtenances thereto belonging or in anywise appertaining and the reversion and reversions, remainder and remainders, rents, issues, and profits thereof.

And also all the estate, right, title, interest, property, possession, claim, and demand whatsoever, as well in law as in equity, of the said party of the first part and the said The New Philadelphia Silver Mining Company of, in, or to the said premises, property, rights, and interests conveyed and every part and parcel thereof,
468 with the appurtenances.

And also all the right, title, and interest of the said receiver and said company to the right of redemption as provided in the laws of Nevada for said company as a judgment debtor or its successors in interest in the whole or any part of the property of said company in the State of Nevada or any right of redemption in said company or said receiver or the successors of said company arising in any way under any of the laws of the State of Nevada; also all the right, title, and interest of said receiver and said company or any successors of said company in all real estate wheresoever situate in the State of Nevada sold under execution by any judgment creditor and which is subject to redemption under the laws of the State of Nevada:

To have and to hold all and singular the said premises, property, rights, and interests hereby conveyed or intended so to be, together with the appurtenances, rights, and privileges thereto incident, unto the said parties of the second part, their heirs and assigns forever.

In witness whereof the said party of the first part, as receiver as aforesaid, hath hereunto set his hand and seal the day and year first above written.

HENRY B. STANTON, [L. S.]
469 *As Receiver of the New Philadelphia Silver Mining Company.*

Sealed and delivered in presence of—
WILLIAM E. GILHOOLEY.
CHARLES NETTLETON.

STATE OF NEW YORK, }
City and County of New York, } *ss:*

Be it remembered that on this — day of ——, A. D. 1881, before me, Charles Nettleton, a commissioner appointed by the Governor of the State of Nevada to take acknowledgment of deeds in the State of New York, to be used and recorded in the State of Nevada, and residing in the city of New York, personally appeared Henry B. Stanton, receiver of the New Philadelphia Silver Mining Company,

to me personally known and known to me to be such receiver and to be the same person whose name is subscribed to the foregoing deed as a party thereto and known to me to be the person described in and who executed the foregoing instrument, who duly acknowledged to me that he executed the same as such receiver freely and voluntarily and for the uses and purposes therein mentioned.

In witness whereof I have hereunto set my hand and affixed my official seal, at my office, in the said city of New York, this 29th day of October, A. D. 1881.

[L. S.] CHARLES NETTLETON,
Commissioner for Nevada in New York.

470 (Endorsed:) Henry B. Stanton, as receiver of the New Philadelphia Silver Mining Company, to Franz O. Matthiessen and Lebbens B. Ward. Copy. Receiver's deed, dated 16th September, 1881. Recorded, at the request of R. Gluyas, November 14th, A. D. 1881, at 10 min. past one o'clock p. m., in Book K of Deeds, at pp. 608 to 629, inclusive, Nye county, Nevada, records. M. R. Delano, recorder. Abbett & Fuller, 229 Broadway, New York. 1882, 16042–8. Returned to Mess. Abbett & Fuller, No. 229 Br'way, New York city. "Plaintiff's Exhibit O." John B. Thompson, special examiner. Filed Nov. 1, 1886. T. J. Edwards, clerk.

471 PLAINTIFF'S EX. P (WASHINGTON).

C. DEPARTMENT OF THE INTERIOR, W. O. C., A. M. H.
GENERAL LAND OFFICE, M. E. N. H., F. J. P.
WASHINGTON, D. C., *February 25th*, 1886. F. G.

I, S. M. Stockslager, acting Commissioner of the General Land Office, do hereby certify that the annexed paper is a true and literal exemplification of office letter of February 25th, 1886, addressed to S. S. Burdett, special counsel for the United States, Washington, D. C.

In testimony whereof I have hereunto subscribed my [L. S.] name and caused the seal of this office to be affixed, at the city of Washington, on the day and year above written.

S. M. STOCKSLAGER,
Acting Commissioner of General Land Office.

C. DEPARTMENT OF THE INTERIOR, A. M. H.
GENERAL LAND OFFICE, W. O. C.
WASHINGTON, D. C., *Feb'y* 25, 1886. F. G.

Mr. S. S. Burdett, special counsel for the United States, Washington, D. C.

SIR: In compliance, partially, with your request of the 15th instant, I transmit herewith certified copies of the following papers, viz:

472 1. Letter of H. B. Stanton to the Commissioner of this office, dated New York, June 20, 1881.

2. Office letter of March 9, 1882, addressed to Mr. Leon Abbott, 229 Broadway, New York city.

3. Office letter of May 23, 1882, addressed to Mr. L. B. Ward, care Abbott & Fuller, 229 Broadway, New York city.

4. Office letter of August 14, 1882, addressed to Henry B. Stanton, New York city.

5. Office letter of September 11, 1882, addressed to F. H. Hinckley, register, Eureka, Nevada.

6. Office letter of February 21, 1883, addressed to Messrs. Curtis & Burdett, Washington, D. C.

In regard to the protests and arguments of September 6th and 16th, 1882, said to have been filed in this office by Curtis & Burdett, as attorneys for Matthiessen & Ward, in relation to desert-land entry No. 158 of Joseph T. Williams in section 33, t'p 8 N., R. 50 E., Nevada, and also protests and arguments in same matter, said to have been filed November 10th and December 30, 1882, I have to state that such papers, as shown by the records of this office, were duly received, but the same appear to have been mislaid and
473 cannot at this time be found. Therefore I am unable to furnish the copies thereof called for by you.

The letter, with the enclosures, of Leon Abbott, addressed February 21, 1882, to the Commissioner of this office, of which you request certified copies, is among the files of the office of the Secretary of the Interior.

Very respectfully, S. M. STOCKSLAGER,
Act'g Commissioner.

Endorsed: Plaintiff's Exhibit P. John B. Thompson, special examiner. Filed Nov. 1, 1886. T. J. Edwards, clerk.

474 PLAINTIFF'S EX. Q (WASHINGTON).

C. DEPARTMENT OF THE INTERIOR, A. M. H.
GENERAL LAND OFFICE, M. E. N. H.
WASHINGTON, D. C., *February* 25, 1886. F. J. P., F. G.

I, S. M. Stockslager, acting Commissioner of the General Land Office, do hereby certify that the annexed paper is a true and literal exemplification of a letter addressed to the Commissioner of this office by H. B. Stanton, dated New York, June 20, 1881, now on file here.

In testimony whereof I have hereunto subscribed my name
[L. S.] and caused the seal of this office to be affixed, at the city of Washington, on the day and year above written.

S. M. STOCKSLAGER,
Acting Commissioner of General Land Office.

Law offices of Henry B. Stanton, No. 198 Broadway, rooms 10 & 11.

NEW YORK, *June 20th*, 1881.

To the honorable the Commissioner of the General Land Office.

DEAR SIR: I have been appointed by the supreme court of New

York receiver of the New Philadelphia Silver Mining Com-
475 pany, owning several mines and other lands in Nevada. About two years ago a party in Nevada conveyed to the said company, by deed, all his interest in a tract of land which he had located, as I am informed, as desert land, but for which he had and has no patent. The company erected a valuable mill on this land. The deed to the company was, I am informed, recorded in the county records of Nye county, Nevada, but not in the land office of the district or at Washington. I am desirous of protecting the company's interest in the said lands, as well against the party who deeded the land to the company as others, and I would like to know what further steps are necessary to protect and complete the company's title. I have seen the decision of Commissioner Drummond, dated March 8th, 1873, and reported in Copp's U. S. Min. Lands, p. 123, in regard to the steps to be taken by assignees of mining claims. Does this decision apply equally to assignments of
476 desert lands? In case it is necessary to record the deed to the company in order to protect the assignment, please let me know whether it should be filed in your office or at the land office in the mining district in Nevada or both; also whether I can file a certified copy of the deed instead of the original deed. I should much prefer, as an officer of the court, to keep the original deed and file only a certified copy or copies, if your office will permit that to be done.

Yours respectfully, H. B. STANTON,
Receiver, &c.

Endorsed: Plaintiff's Exhibit Q. John B. Thompson, special examiner. Filed Nov. 1, 1886. T. J. Edwards, clerk.

477 PL'FF'S EX. R (WASHINGTON).

DEPARTMENT OF THE INTERIOR, A. M. H.
GENERAL LAND OFFICE, M. E. N. H.
WASHINGTON, D. C., *February 25th*, 1886. F. J. P., F. G.

I, S. M. Stockslager, acting Commissioner of the General Land Office, do hereby certify that the annexed paper is a true and literal exemplification of office letter of March 9th, 1882, addressed to Mr. Leon Abbett, 229 Broadway, New York city.

In testimony whereof I have hereunto subscribed my
[L. S.] name and caused the seal of this office to be affixed, at the city of Washington, on the day and year above written.

S. M. STOCKSLAGER,
Acting Commissioner of General Land Office.

C. DEPARTMENT OF THE INTERIOR, D. K.
GENERAL LAND OFFICE, M. E. N. H.
WASHINGTON, D. C., *March 9th*, 1882.

Mr. Leon Abbett, 229 Broadway, New York city.

SIR: I am in receipt of yours of the 21st ult., in which you request this office to grant a hearing "if any application is made by

Joseph T. Williams, Mrs. Sophie Williams, William F. Ernst,
478 John D. Ernst, Henry B. Campbell, Lafayette Joslyn, Charles Garrett or their grantees or parties claiming to derive title through them for any of the land or water rights embraced in the deeds and agreements," copies of which you forwarded with your letter. Your request is made in behalf of Franz O. Matthiessen and Lebbens B. Ward, who claim certain mines and other property under deed from Henry B. Stanton, as receiver of the New Philadelphia Silver Mining Company, the same being situate in Hot Creek cañon, Nye county, Eureka district, Nevada. You mention certain sections of land as embracing the lands in which you are interested, to wit, sections 28, 29, 33, and 34, t'p 8 N., R. 50 E., said district.

The only subdivisions described in the papers sent by you are the S. ½ of S. W. ¼ sec. 28 and E. ½ of S. E. ¼ sec. 29 and the E. ½ of S. E. ¼ sec. 33. The tracts in sections 28 and 29 are described in the deed from William F. Ernst to Jos. T. Williams, dated May 20, 1880, and that in section 33 in deed from Jos. T. Williams to New Philadelphia Silver Mining Company, dated July 26, 1879.

479 I enclose a list of entries made for lands in said sections, to wit, pre-emption cash entries 38, 72, and 73, homestead entry 69, and original desert-land entry 158.

You will observe by the remarks made on the list that entry 38 has been patented, that 72 and 73 are suspended, and that 69 and 158 have not as yet been consummated.

The subdivision of land in sections 28 and 29 above described are covered by the entry of William F. Ernst, No. 72, dated May 10, 1880, and the subdivision in section 33, also described above, is embraced in the desert-land entry of Joseph T. Williams, No. 158, made May 19, 1879. The deed of Ernst to Williams was not made until after entry 72 was allowed.

The courts have decided that land embraced in a pre-emption claim may be assigned or transferred by the applicant for a patent immediately upon issue of certificate as a basis for patent. With regard to entry 158 I would state that this Department neither recognizes transfers or assignments of lands in desert-land entries nor considers such transactions as disqualifying the party to the
480 original declaration from consummating entry by making satisfactory proof of reclamation of the land and payment.

The land embraced in the desert-land entry was not returned by the surveyor general as mineral, but the S. ½ of sec. 29 was. The pre-emption entries pending embrace portions of the S. ½ of sec. 29. The parties thereto published notice of intention to make proof, and I am not advised that any protest was filed against their claims prior to date that the entries were allowed. It is the rule of this office that pre-emption and homestead entries for lands in the mineral belts may be patented where such publication is resorted to as required by the act of March 3, 1879, and no protests are filed against the claims regarded as requiring recognition.

You do not allege mineral value of the tracts embraced in the entries. The general claim made by you to sites, improvements, and water privileges in the vicinity mentioned is of such indefinite

nature as to require no action on the part of this office. The papers filed by you cannot be regarded as such a protest as would
481 warrant this office in treating the entries pending otherwise than as if the same had not been filed. Of course, it is the duty of the land officers to avoid allowing entries of lands as agricultural embraced in whole or in part in mineral claims made of record in their office. Should agricultural claimants attempt to obtain title to lands known to be mineral, whether claimed or unclaimed by miners, the course for the miners or those conversant with the facts to pursue is pointed out in circulars of April 27 and Sept. 23, 1880, copies enclosed herewith.

Very respectfully, N. C. McFARLAND,
Commissioner.

Endorsed: Plaintiff's Exhibit R. John B. Thompson, special examiner. Filed Nov. 1, 1886. T. J. Edwards, clerk.

482 PLAINTIFF'S EXHIBIT S (WASHINGTON).

C. DEPARTMENT OF THE INTERIOR, A. M. H.
GENERAL LAND OFFICE, M. E. N. H., F. J. P.
WASHINGTON, D. C., *February 25th*, 1886. W. O. C., F. G.

I, S. M. Stockslager, acting Commissioner of the General Land Office, do hereby certify that the annexed paper is a true and literal exemplification of office letter of May 23, 1882, addressed to S. B. Ward, care of Abbott & Fuller, 229 Broadway, New York city.

In testimony whereof I have hereunto subscribed my
[L. S.] name and caused the seal of this office to be affixed, at the city of Washington, on the day and year above written.

S. M. STOCKSLAGER,
Acting Commissioner of General Land Office

C. DEPARTMENT OF THE INTERIOR, A. M. H.
GENERAL LAND OFFICE, M. E. N. H.
WASHINGTON, D. C., *May 23d*, 1882.

Mr. S. B. Ward, care Abbott & Fuller, 229 Broadway, New York city.

SIR: You are hereby advised that there is no evidence on file in this office showing the relinquishment by Mr. Joseph T. Wil-
483 liams of any portion of his desert-land entry No. 158, made by him in the Eureka land district, State of Nevada.

Very respectfully, N. C. McFARLAND,
Commissioner.

Endorsed: Plaintiff's exhibit S. John B. Thompson, special examiner. Filed Nov. 1, 1886. T. J. Edwards, clerk.

PL'FF'S EX. T (WASHINGTON).

C. DEPARTMENT OF THE INTERIOR, A. M. C.
GENERAL LAND OFFICE, M. E. N. H., F. J. P.
WASHINGTON, D. C., *February 25th*, 1886. F. G.

I, S. M. Stockslager, acting Commissioner of the General Land Office, do hereby certify that the annexed paper is a true and literal exemplification of office letter of August 14, 1882, addressed to Henry B. Stanton, New York city.

In testimony whereof I have hereunto subscribed my [L. S.] name and caused the seal of this office to be affixed, at the city of Washington, on the day and year above written.

S. M. STOCKSLAGER,
Acting Commissioner of General Land Office.

484 C. DEPARTMENT OF THE INTERIOR, C. W. D.
GENERAL LAND OFFICE, M. E. N. H.
WASHINGTON, D. C., *April* 14, 1882.

Henry B. Stanton, Esq., New York city.

SIR: I am in receipt of your letter of June 20, 1881, stating that several years since a party in Nevada conveyed to the New Philadelphia Silver Mining Company all his interest in a tract of land which he had located under the desert-land act, but for which he had received no patent; that said mining company erected a valuable mill upon the land, and that you as receiver of said company desire to protect its interest, and request information as to what steps are necessary to complete the company's title.

In answer I have to say that the Hon. Secretary of the Interior, under date of April 15, 1880, decided that desert-land claims are not assignable; that no rights passed to the purchaser when the assignment was made, and that a patent in such case, if issued, must be issued to the party making the entry. I enclose herewith for your information a circular from this office and invite your attention to pages 29, 61, 88, and 89 thereof relating to the entry of desert lands.

Very respectfully, N. C. McFARLAND,
Commissioner.

Endorsed: Plaintiff's Exhibit T. John B. Thompson, special examiner. Filed Nov. 1, 1886. T. J. Edwards, clerk.

485 PLAINTIFF'S EXHIBIT V (WASHINGTON).

C. DEPARTMENT OF THE INTERIOR, A. M. H.
GENERAL LAND OFFICE, M. E. N. H., F. J. P.
WASHINGTON, D. C., *February 25th*, 1886. W. O. C., F. G.

I, S. M. Stockslager, acting Commissioner of the General Land Office, do hereby certify that the annexed paper is a true and

literal exemplification of office letter of September 11, 1882, addressed to F. H. Hinckley, Esq., register, Eureka, Nevada.

In testimony whereof I have hereunto subscribed my name
[L. S.] and caused the seal of this office to be affixed, at the city of Washington, on the day and year above written.

S. M. STOCKSLAGER,
Act'g Commissioner of the General Land Office.

A.

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,
WASHINGTON, D. C., *Sept.* 11, 1882.

F. M. Hinckley, Esq., register, Eureka, Nevada.

SIR: In the matter of desert-land entry No. 158, made by Joseph T. Williams, at your office, embracing, among other tracts,
486 the east half of the southeast quarter of section 33, township 8 north, range 50 east, Mount Diablo meridian, it is represented that said tract was conveyed by said Williams to the New Philadelphia Silver Mining Company; that R. Gluyas, Esq., of Hot Creek, Nye county, Nevada, addressed a letter to you on behalf of said company 25th July last, requesting information concerning the status of said entry, and that you replied to him under date 3d ultimo, as follows: "Mr. Williams has informed me that he would try and procure the cancellation of his desert-land entry. We have received no notice as yet of the cancellation of said entry." The record in this case shows that May 20, 1882, J. T. Williams made relinquishment of the entry in question, and that said relinquishment, according to your own endorsement upon same, was filed in your office June 9, 1882, and transmitted to this office with your letter of even date, almost two months prior to the time when it is alleged you made the above reply. Upon a cursory exami-
487 nation of the matter it would seem that the information, if furnished by you as aforesaid, was not in accordance with the facts in the case and misleading in result, and therefore calculated to create suspicion in the public mind as to the honest administration of your office in matters coming before you for official action. Large and valuable interests were affected by the relinquishment of Williams, and the company should have been notified when it was filed in your office, or, at all events, when it applied to you through its agent for information. Please explain the matter at once.

Very respectfully,

N. C. McFARLAND,
Commissioner.

Endorsed: Plaintiff's Exhibit V. John B. Thompson, special examiner. Filed Nov. 1, 1886. T. J. Edwards, clerk.

488 PLAINTIFF'S EXHIBIT W (WASHINGTON).

C. DEPARTMENT OF THE INTERIOR, W. O. C., A. M. H.
GENERAL LAND OFFICE, M. E. N. H.
WASHINGTON, D. C., *February 25th*, 1886. F. J. P., F. G.

I, S. M. Stockslager, acting Commissioner of the General Land Office, do hereby certify that the annexed paper is a true and literal exemplification of office letter of February 21st, 1883, addressed to Messrs. Curtis & Burdett, Washington, D. C.

In testimony whereof I have hereunto subscribed my name
[L. S.] and caused the seal of this office to be affixed, at the city of Washington, on the day and year above written.

S. M. STOCKSLAGER,
Acting Commissioner of General Land Office.

C. DEPARTMENT OF THE INTERIOR, J. W. L.
GENERAL LAND OFFICE, 1.
WASHINGTON, D. C., *Feb'y 21st*, 1883.

Messrs. Curtis & Burdett, Washington, D. C.

GENTLEMEN: On Sept. 6th, 1882, you filed a motion in this office to reinstate Eureka, Nevada, desert-land entry No. 158, made by Joseph Williams May 19, 1879, and cancelled by relinquish-
489 ment August 4, 1882. You also desired that your letter should be treated as a protest against the approval of the selection made by the State of Nevada upon the application of the said Williams, which application embraces a certain 80-acre tract in question. In this proceeding you appear as attorneys for Messrs. F. O. Matthiessen and L. B. Ward, who claim to have derived certain interests in said land from Williams through intermediate parties. Mr. Williams, by his attorney, protests in his turn against the reinstatement of his desert-land entry, which he states he voluntarily relinquished for the reason that he could not comply with the law. You file statements showing the nature of the transactions between the New Philadelphia Silver Mining Company and Mr. Williams and a copy of a deed from Williams purporting to convey to said company whatever rights he possessed to the 80 acres in question, the consideration mentioned being the sum of five thousand dollars. You state that the land is used as a site for a stamp-mill, which has been erected thereon at a cost of over $50,000, and that by the failure of Williams to obtain title under his desert-land
490 entry and his ultimate relinquishment of that entry your clients have been defrauded. Mr. Williams, upon his own part, submits a statement of the business transactions referred to and sets up certain claims of his own against opposite parties to the individual controversy. With these personal matters this office can have nothing to do. The only questions that can arise in respect to desert-land entry No. 158 are whether said entry was properly cancelled; and, if so, whether there is good cause shown for its reinstatement or any proper application before me which could be considered in that behalf.

The relinquishment and cancellation of the entry are in due form, and all the proceedings appear to have been regular.

It is admitted by the party to the entry that the land was not reclaimed. He does not ask for the reinstatement of his entry, and no other person is authorized to make such application in his name; neither does any cause appear why the entry should be reinstated on its merits. This office cannot undertake to enforce the obligations of private contracts by attempting to compel a party to
491 take title to land which he does not desire and to which he has no legal claim. It is an established principle in the administration of the land laws that purchasers before patent take with notice of all defects and of the contingency that title may never be perfected.

They are not innocent purchasers, and if their conveyances prove empty they can have no recourse upon the Government to give substance thereto. The doctrine laid down by Mr. Justice Miller in the case of Root *vs.* Shields, 1 Woolworth, C. C., 342, has been uniformly recognized and followed as the correct rule of law applicable to such cases. The question of the validity of the State selection will be determined in due course of action thereon by this office.

Very respectfully, N. C. McFARLAND,
Commissioner.

Endorsed: Plaintiff's Exhibit W. John B. Thompson, special examiner. Filed Nov. 1, 1886. T. J. Edwards, clerk.

492 *Def't's Testimony (E. C. Ford).*

In the Circuit Court of the United States for the Ninth Circuit and District of Nevada.

UNITED STATES, Plaintiff,
v.
JOSEPH T. WILLIAMS, Defendant. } In Equity.

Be it remembered that at an examination of witnesses begun and held on the twenty-fifth day of February, A. D. 1886, when the within testimony was taken, I, John B. Thompson, special examiner or commissioner, did cause to be personally present at my office, No. 925 "F" street northwest, in the city of Washington, District of Columbia, Ellery C. Ford, to testify on the part and behalf of the defendant in a certain cause now pending in the circuit court of the United States for the ninth circuit and district of Nevada wherein The United States is plaintiff and Joseph T. Williams is defendant.

And be it further remembered that the counsel for the plaintiff and for the defendant in the said cause having stipulated that William W. Curtis, a witness produced and examined on the part of the plaintiff, might "be recalled for cross-examination by the defendant during the taking of the testimony for the defendant in this case, if the defendant so desires," that the said William W.

Curtis was, pursuant to said stipulation, recalled for such cross-examination, at my office aforesaid, on the first day of April, A. D. 1886, and that the cross-examination of said witness by the defendant was then and there had.

493 In the Circuit Court of the United States, Ninth Circuit and District of Nevada.

UNITED STATES, Plaintiff,
v.
JOSEPH T. WILLIAMS, Defendant. } In Equity.

Met at the office of John B. Thompson, special examiner, No. 925 "F" street northwest, Washington, D. C., Thursday, March 25, 1886, at 12 o'clock m.

Present: James K. Redington, Esqr., and E. C. Ford, Esqr., for the defendant, and S. S. Burdett, Esqr., representing the Attorney General, for the plaintiff.

Whereupon ELLERY C. FORD, a witness produced, sworn, and examined on the part of the defendant, says as follows:

By Mr. REDINGTON:

Q. What is your occupation or profession?

A. My name is Ellery C. Ford; attorney-at-law, Washington, D. C.

Q. How long have you been practicing your profession in Washington?

A. Eight years.

Q. Prior to that time, Col. Ford, how were you engaged?

A. I was chief of the mineral division of the General Land
494 Office for six years.

Q. State whether you know the defendant Williams and what professional relations you have had at any time with Williams in connection with the case under consideration.

A. I am acquainted with Mr. Williams and have represented him as his attorney at this end of the line since the papers relating to these cases first came up.

Q. You represented him in the litigation or controversy relating to the desert-land entry?

A. I did.

Q. And subsequently in relation to the State selection against the mill-site application?

A. Yes, sir.

Q. In the discharge of your professional duties in that connection, when, if at any time, did you first examine or see the list of State selections already introduced in evidence as "Plaintiff's Exhibit B?"

A. I do not know the exact date when I first saw that, but it was soon after the list had been received in the Land Office and posted, I suppose.

Q. Did you at that time critically examine it with reference to these particular tracts of land?

A. I did.

Q. State whether or not at that examination you saw noted on that list opposite these selections for the tracts in question any reference to a mill site or other conflicting claim.

A. I did not.

Q. When, if at any time subsequent to this first examination, did you have occasion to examine this list again?

A. Some time between the 18th of January, 1883, and January 24, 1883, with respect to the mill-site application—the filing of the mill-site application.

Q. When was this second examination made?

A. The papers in the mill-site application were received in
495 the General Land Office on January 18th, 1883, and I examined the papers about that time and prior to the 24th day of that month. I know this from the fact that on the 24th of January I wrote to Mr. Williams the result of that examination.

Q. At this second examination of this list did you observe any notation whatever opposite these particular tracts?

A. I did not.

Q. Did you ever subsequently examine this list; if so, when?

A. I did; prior to the filing of an argument which was filed on May 7, 1883.

Q. Just before the filing of that argument?

A. Yes, sir.

Q. I understand, then, that for the third time you examined this list just prior to the filing of this argument.

A. Yes.

Q. State whether at this third examination you observed on that list any notation opposite these tracts.

A. I never at any time found any notation opposite to these tracts, to my recollection, prior to the listing of the land to the State, although I had examined it three times or more. I was going to say my reason for thinking so is that I have got my original notes of what was in the cases at my last examination and I haven't any annotation on them whatever.

Q. Then you have refreshed yourself from those notes?

A. I have.

Q. In preparing your case in such an examination would you have omitted from your notes any annotation that you would have observed upon the list?

A. I certainly would not.

Q. With what care did you examine this list on those occasions?

A. I examined that with a good deal of care, for I desired to do everything I could to protect Williams' rights in the matter.

Q. When, for the first time, did you learn that the lands
496 had been listed to the State of Nevada?

A. In the month of December, 1883.

Q. State, if you know, when Mr. Williams first learned of the listing of this land to the State of Nevada, and how he learned it.

A. He first ascertained that fact after his return home in December, 1883. He left word with me that if any letters or telegrams

came to him that I should open the telegrams and retransmit them and return the letters. I received a communication, or letter, which was sent to him in his name informing him that list 24 had been listed to the State, including the lands in controversy. Then for the first time did I know it, and by his letters it appears the first time he ever knew it.

Q. That notification was communicated by telegram or letter?

A. By telegram.

Q. By telegram from some one in Nevada?

A. Yes; by telegram.

Q. You opened that telegram under his direction?

A. I did.

Q. And sent it to him?

A. I did.

Q. And it is not now in your possession?

A. It is not now in my possession.

Q. Colonel, I will ask you whether at any time you erased any note or memorandum from this list of State selections or caused it to be done or directed that it should be done by anybody.

A. I neither erased the same nor caused it to be done in any way, shape, form, nor manner.

Q. Was Mr. Williams represented by anybody in Washington in connection with this matter except you?

A. No one.

Q. Did any one in the interest of Williams have any access to those papers or anything to do with them except you?

A. There was a gentleman by the name of Patterson, who was doing some work for me at that time, who did see the papers.

Q. Where is Patterson?

A. I don't know—he is dead.

497 Q. How long has he been dead?

A. I should say for two years this spring.

Q. Did you give any instructions whatever to Patterson in respect to the erasure of any annotation upon this list?

—. I never did.

Q. Did he ever report to you, in writing or otherwise, that upon this list there was any annotation?

A. He never did, to my recollection.

Q. When did you first know of any claim that there had been any erasure of a notation upon that list?

A. Not until the listing had been made, and I think not until the question came up, along in December, in regard to the listing.

Q. As chief of the mineral division I doubt not, Colonel Ford, you became familiar with the practice of that division both in respect to cases pending therein and cases which involved joint action of that division and the pre-emption division of the General Land Office.

A. I endeavored to and did.

Q. In the administration of that office—of the Land Office—what effect would the notation of the words "mill site" opposite a State selection have in the disposition of the case where, upon examination, it was found that the State application or location preceded in

date the filing of the mill-site application? Under such circumstances what disposition would be made of the case in the General Land Office?

A. In view of the fact that a mill site must be on non-mineral land, it would be treated the same as ordinary agricultural claims against the State selection, and, being later in date, the State selection would be approved.

Q. So in the case now in question, if the attention had been called by division "G"—the pre-emption division—to the conflict said to have been noted on the list, the result would necessarily have been, under the rules and practice, to have certified the land to
498 the State, notwithstanding the mill-site application?

(Mr. BURDETT: That question is objected to as leading, irrelevant, and as suggestive.)

A. It would naturally and necessarily, under the rules of the office, as I understand them.

Mr. REDINGTON: I now call upon Mr. Burdett, special counsel for the United States, to produce an argument of Ellery C. Ford in the matter of the conflict between the State selection and the mill site, filed in the General Land Office on the 7th day of May, 1883, office number 41995, for the purpose of introducing the same in evidence.

(The counsel for the United States here produces a paper and hands it to Mr. Redington, of counsel for the defendant.)

Mr. REDINGTON: I now offer this paper in evidence on behalf of the defendant and ask that it be marked as "Defendant's Exhibit A."

The paper in question is here marked by the special examiner as "Defendant's Exhibit A."

Cross-examination by Mr. BURDETT:

Q. Be good enough to state fully and at length what concern you had with list No. 24, marked "Plaintiff's Exhibit B," upon its filing in the General Land Office, particularly what it contained which was in any way of interest to you in preparing any case you had for Williams in the General Land Office.

A. The State of Nevada had selected on the second day of September, 1882, quite a large number of tracts of land which were embraced in list No. 24. Among those tracts I find the east half of the southeast quarter of section 33, township 8 north, range 50 east; also the west half of the southwest quarter of section 34, in
499 said township. I had understood that Mr. Williams proposed to purchase from the State under that listing and selection when the lands should pass to the State, and for that reason he employed me to represent him.

Q. Then your interest in the contents of that list was simply in the selection it contained of the two tracts of land you have mentioned?

A. It was in regard to two tracts of land which I presume are correctly described therein, to wit, the ones heretofore referred to.

Q. Did you on your first examination, which you placed at about the time the list was received and posted, make any note of the selections therein contained?

A. I did; and of the endorsements thereon taken at the time, which exactly agree with those on the list.

Q. What do you mean by saying you took copies of any endorsement thereon at that first examination of the list?

A. (Witness pointing to a paper in his hands.) Copies of the certificates of the register and receiver, dated September 16, 1882, and of the application dated August 31, 1882.

Q. You mean, then, by that simply that you took a note of the official certificates appended to that list?

A. That was a part of the memorandum that I took at that time.

Q. Do you mean to say that you took a memorandum of all annotations that at that time appeared on the list?

A. Any that would affect the lands hereinbefore referred to.

Q. Did you take from that list at that time a note of a pencil memorandum made on the list in these words: "See letter to Leon Abbett, 'C' M'ch 9, 1882?"

A. I did not; and from the fact that I did not I am positive that they were not there at that time.

Q. Do you know in whose handwriting that memorandum is?

500 A. I am not positive. I do not know whose it is.

Q. Do you believe or think you know in whose handwriting it is?

A. I do not think I know.

Q. Do you know one Hirth, who is a posting clerk in the General Land Office?

A. I do.

Q. Do you not believe that it is in his handwriting?

A. I have no reason to believe that it is or is not. I am not familiar enough with his handwriting to judge.

Q. Are you as certain when you examined that list the first time you have mentioned that that particular endorsement was not on it as you are that no other endorsement was there?

A. I feel certain that at no time when I examined that list No. 24 was that annotation there. This I am the more satisfied of from an examination of my minutes taken at the several times.

Q. Have you here present with you the minutes you took on your first examination?

A. I have got minutes which I took in the month of January, 1883, in part, not in full.

Q. What has become of the part that is missing?

A. I am unable to state as to that. I do not usually retain on my files my minutes of a case after the same has been disposed of. After this listing was made it would be my general custom to destroy my notes so as not to incumber my files. In looking over my old papers I happened to find this paper a few days ago.

Q. Then you are testifying from minutes and memorandum which you agree are incomplete?

A. They are complete as far as they go, and show all that was to be found upon the list which would concern me or my client at the time of the examination.

Q. But I understand that you haven't all the minutes you took on the occasion of your examination of that list.

A. I presume that I haven't all the minutes that I have taken of the two cases at all of the examinations which I made.

501 Q. Then I repeat the question. Is it not true that you are testifying on the strength of minutes which you agree are incomplete?

A. I am testifying from recollection and also upon the facts which I find in my minutes—satisfied as to the recollection, and supported in the correctness of that recollection by the documents I have.

Q. Are not the minutes from which you are testifying and which you now hold in your hand simply copies of the certificates—two in number—which are appended at the foot of list 24?

A. That is what the memorandum is.

Q. And do I understand you that this memorandum was taken at the time or about the time of the first examination of that list?

A. I think it was.

Q. Be good enough to look at that memorandum and see whether or not the copy you made of the certificate of August 31, 1882, purporting to be signed "A. J. Hatch, by J. W. Fassett, deputy," is not as you have made it out, signed "A. J. Hatch, selecting agent, by J. W. Fassett, deputy."

A. My memorandum here says, "A. J. Hatch, selecting agent, by J. W. Fassett, deputy."

Q. I will now ask you whether it has not come to your knowledge that at the time you made your first examination of that list and at the several times thereafter when you so examined that list, as you have testified, that certificate was not in fact a blank, and the name A. J. Hatch afterwards supplied by a return of the list to the local office, a considerable length of time after the listing had finally been made to the State of Nevada.

A. I recollect there was a controversy in regard to that point. I cannot give the dates, though, now, but the records of the General Land Office will show.

502 Q. If that state of facts is true, is it not further true that the memorandum you now present, if a true memorandum, was not in fact made until a time long subsequent to the final listing of the tracts to the State?

A. You seem to have mistaken the business entirely. I do not say that I have an exact copy. I simply state what my minutes contain. The date when those minutes were made I am unable to state. I know that it was at an examination of the case, but the particular day or the particular time I am unable to state.

Q. Then is — true or not true that the minutes or memorandum

from which you have been testifying were made at a time subsequent to the final listing of the tracts to the State?

A. I have been testifying from my recollection of the facts in the case, and also have referred to such memorandum as I have bearing upon the case.

Q. I ask again if the memorandum you testified from was correctly taken at the time—that is to say, if it was taken at a time when the name of the selecting agent was actually upon the list, is it not true that such memorandum was taken at a time long subsequent to the final listing of those lands to the State of Nevada?

A. Of course, at the time this memorandum that I hold in my hand was made, being a copy of that which is attached to list No. 24, it must necessarily have been made at the time that those blanks were filled up.

Q. Colonel Ford, after once having examined that list and found the tracts you were interested in reported upon it, what further interest or concern had you with it? In other words, why should you have any need to call for it?

A. Because there was received about the 18th of January, 1883, an application by Messrs. Matthiessen and Ward for five acres, about, of that tract of land, and in the examination of matters relating to the two claims it became necessary to examine the full record and all the papers appertaining thereto.

503 Q. But why examine that particular list?

A. Because it was the only list embracing the tract in controversy that I knew of.

Q. But what occasion had you to expect any change of that list?

A. I had no idea that any change would be made in that list. I was endeavoring that there should be none, nor that the mill-site case should go through to patent while that list was pending—a prior list and appropriation of the land.

Q. But how could either of those purposes have been either advanced or hindered by further inspections of that list?

A. I knew that the attorneys for Matthiessen and Ward were using every endeavor with the Commissioner to get the mill-site application patented—in other words, to steal a march on me—and I did not propose it should be done if I could prevent it, and hence I frequently examined the papers to see what was the last thing that had been done, for I was seldom informed of the action taken by the attorneys for Matthiessen and Ward in the matter, and hence it became necessary to examine all the papers relating to the five acres quite frequently.

Q. What could have been done in aid of the purpose of Matthiessen and Ward or their attorneys which could or would have been evidenced by list No. 24?

A. Why, if that five acres were patented it would take five acres out of that list, of course.

Q. Then you were examining that list from time to time to see if there had been any annotation there of the fact that part of the tracts therein had been patented to Matthiessen and Ward?

A. It is my custom in examining a case to examine the entire case and to keep posted in regard to every piece of it.

Q. But you have not answered my inquiry as to what thing could have happened in connection with this list No. 24 which could either help or hinder the case of your client, Williams, as to his interest in those tracts.

504 A. The only answer to that conundrum is that I always examine all the papers relating to a case when I take it up.

Q. Did you see Williams at the city of Washington at some time after this listing had taken place; if so, when?

A. I did. I saw him in this town somewhere in the first half of December, 1883. He started home, I should judge, about the 15th of that month; from the 10th to the 15th, say.

Q. How do you say that at that time he had no knowledge that these tracts had been listed to the State of Nevada?

A. I say that he had no knowledge, so far as I am advised, that the lands had been listed at that time. I am very certain he had no knowledge of that fact.

Q. And do you say that the fact of the listing was not a subject of conversation between you at that time?

A. We had, of course, while he was here conversations in regard to the State selection and also in regard to the mill site.

Q. Do you desire to be understood as saying that up to the time when you saw Williams in person in this city, in December, 1883, you had not, either verbally or in writing, communicated with him or with any person for him with respect to the then existing fact of the certification to Nevada of these tracts in controversy?

A. I neither had conveyed that fact to him or any one else, nor was I aware of the fact.

Q. Do you feel quite sure that up to that time you had not written advising him or some party in Nevada to advise him of that fact?

A. I know I did not.

Q. Can you state the tenor, the date, and the person from whom the certain telegram to which you referred in your examination-in-chief was received?

A. I cannot give the name of the party from whom it came, but it came from Carson City, if I am not mistaken. I did not

505 charge my memory with it, and am not positive. I think it came from Carson City, stating that the land had been listed to the State; I think it said one hundred and sixty acres or something of that kind.

Q. Was that telegram from an officer of the State?

A. I cannot now recollect who it was, but my impression is it was Mr. Williams' attorney out there, but I am not positive.

Q. Do you know who his attorney was?

A. I do not recollect.

Q. Were you the attorney of Williams to represent any adverse interests he had with respect to the mill-site application of Matthiessen and Ward?

A. Only as I have said, that he was interested in that State selec-

tion, as I had understood, and as the mill-site application embraced a part of the same land I naturally was interested and so was he.

Q. Did you examine the papers in that case?

A. I did.

Q. Are you aware of the fact that there was attached to the register and receiver's letter of January 10, 1883, sending up the mill-site papers, a memorandum, dated February 24, 1883, directing that that—namely, the mill-site case—be considered in connection with the State selection?

A. I cannot say when I first saw this memorandum, and do not know. Mr. Tyssowski, you know, is great for memorandums about every little thing, and has so many tacked onto cases that I can't remember when I saw this particular one.

Q. Did you ever see that memorandum?

A. Well, I am unable to state whether I did or not.

Q. Did you ever take any note or memorandum of the state of the papers in that case?

A. I did; but I was not accustomed to take notes of a clerk which he might put on in matters of that kind, for Mr. Tyssowski had a way of putting them on all the time. If it related to the merits of the case I did take notes of it or should.

Q. Do you mean to say, then, that in the examination of a
506 case of this character and finding appended to the papers a memorandum of this sort you would consider it unworthy of note?

A. I would consider it as having little to do with the merits of the case and as having nothing to do with the rights of the parties thereto.

Q. You did not say whether, in taking notes of the case, you would deem such memoranda of sufficient importance to make notes of them.

A. I should, if it had anything to do which would affect the title of the property one way or the other.

Q. You mean, then, that it is not your habit, in taking notes or memorandum of cases pending in which you are interested, to take a memorandum or any note of a fact which simply had to do with the conduct of the case?

A. If it had anything to do which would affect, directly or indirectly, the title to the premises in dispute, I did; I do.

Q. Then, I repeat, if it simply had to do with the conduct of the case itself in the office you would not note it?

A. If it were simply a note of the clerk who took charge of the case I would not note it. If it referred to any little memorandum which did not and could not have anything to do with the title to the property, I did not at all times note it.

Q. I gather, then, that your habit of examination is such that a matter of no more import than that contained in the memorandum of February 24, 1883, would not attract your attention.

A. I do not say it would not attract my attention, but I say I would take no notice of it in my note.

Q. I notice also attached to that letter a memorandum of March

9, 1883, as follows: "On motion of Mr. Curtis, and Mr. Ford not objecting, the Commissioner directs that action in this case may be delayed for some time." Do you know anything about that?

507 A. I recollect that my attention was called by Mr. Tyssowski to that fact at one time, but whether the memorandum was attached to that paper or not I do not know, for I did not take copy of all the papers in the case, but depended on my recollection some. If it was something which had to do with the merits of the case I did take a note.

Q. You were aware of the fact, were you not, that the mill-site application was pending at the same time that the State selection matter was pending?

A. The subsequent application; yes.

Q. Subsequent or otherwise, the question is, were you aware of the fact that there was actually pending an actual mill-site application at the same time for a part of the same land covered by the State selection, which was then pending?

A. I was aware of the fact that an application was pending for a mill site there, which had been filed with the register and receiver at Eureka, Nevada, and by them rejected.

Q. Do — mean by that to indicate that there was not, during the pendency of the State selection, also pending for the same tract of land an application in the General Land Office by Matthiessen and Ward for a mill site?

A. I am aware of the fact that about the 18th of January, 1883, there was received at the General Land Office this application for a patent by Matthiessen and Ward, which had been rejected by the register and receiver, and that a so-called appeal was taken from their rejection of the application, and that the case was not properly a live case.

Q. You are talking now as an expert?

A. No; I am talking of the matter under the rules, which declare that a decision of the local office becomes final unless an appeal be taken.

Q. Do you mean to say, then, that there was not pending in the General Land Office an application for a mill site by Matthies-

508 sen and Ward when the State selection was pending?

A. I say, on the contrary, that there was then pending in the General Land Office the papers appertaining to an application of Matthiessen and Ward for a mill site.

(At the request of counsel for the defendant a recess is here, at half after one o'clock p. m., taken until half after two o'clock p. m.

Met at two thirty o'clock p. m., pursuant to adjournment or recess, whereupon the cross-examination of the witness, E. C. FORD, is continued.

By Mr. BURDETT:

Q. Up to the date of the certification of the tracts in controversy to the State of Nevada and up to the time when you say you became

aware of the fact of that certification, had the General Land Office passed upon that pending mill-site application?

A. No action, I think, had been taken by that office in that matter.

Q. In your examination-in-chief you indicated, as matter of opinion, that where a State application was pending and an application adverse thereto made at a subsequent date that the State selection would be approved notwithstanding the junior application?

A. Yes; if that counter-claim was an agricultural claim.

Q. Do you mean to be understood that the mere question of date of application in such a case would control?

A. When the land is public land in that way, as it was after the cancellation of the desert entry, the party who first filed for it as agricultural land would have the better right to the land, and in ordinary cases it would be so decided or so result.

509 Q. Do you mean to be understood as saying that the date of application for a tract of land is decisive as to the time when rights under the application inure to the party making it?

A. Not in all cases.

Q. Is it not true that there are cases where, by reason of improvements made and existing, a party may, under the laws of the United States, have rights in a tract of public land which antedate his actual application therefor?

A. It is an unfortunate thing that you can find a decision on every side of every question presented to the General Land Office.

Q. I conclude from the reply to the last question that you are willing to concede that mere date of application is not necessarily decisive?

A. As I said before, the office has made some rare decisions upon almost every side of every question presented to it.

Q. In whose handwriting is the paper or argument you have appended as "Defendant's Exhibit A?"

A. It is in the handwriting of Mr. Patterson.

Q. Were all of the formal papers which were filed in your name in the State selection case in the handwriting of the same person?

A. I cannot state as to that without an examination. I do not — but what they may be, and I don't know that they were.

Q. Is it not true that the same Mr. Patterson in fact made most of the examinations of the papers in connection with the prosecution of the State selection case and with respect to the controversy theretofore existing arising out of the relinquishment of the desert-land entry of Williams on the same tract of land?

A. I do not know how many times he examined the papers. I don't think, however, that he examined the papers in this case more than once, though he may have done so.

510 Q. What occasion had you for examination of list No. 24 at any time after October 1st, 1883?

A. I think it was in reference to a point that had been raised in regard to some signatures to the list of selections.

Q. Then that fact was at some time during the year 1883 brought to your attention?

A. Yes; and after those signatures were attached it must be that this memorandum was made, and at that time I had no information as to the annotation made on the side of the list.

Q. Are you willing to attach to your deposition the memorandum just spoken of and respecting which you have been generally speaking in this examination?

A. I see no necessity for putting it in. It is the same thing as is in the list there. If it is of any value to you you can have it, I reckon.

Mr. BURDETT: Of course, it is a private paper and I cannot demand it.

The WITNESS: Being exactly the same thing as in the list, there is no use for it, I reckon.

Mr. BURDETT: If you are willing to put it in I will ask you to do so and have it marked as an exhibit in the case.

The WITNESS: I have no objection to putting it in, but I would state that the words "Saturday, 10 a. m., Jan'y 16, '86," in pencil, relate to the day the hearing was set for in this office and was not a part of the original memorandum.

The paper referred to is here handed to the special examiner by the witness and is by the special examiner marked "Memorandum by E. C. Ford."

Redirect by Mr. REDINGTON:

Q. If I understand you correctly, Colonel Ford, you have testified from recollection as to the condition of list No. 24 on
511 three different times when you examined it. Is that true?

A. On the occasions in which I have examined it, three or more.

Q. The testimony you have been giving is, in the first place, from your recollection?

A. Yes.

Q. And you have also refreshed your recollection by consulting such memorandum as you now find in the records of your office?

A. Correct.

Q. But you are not certain that the memorandum now found constitutes all the memoranda that you originally had?

A. Yes, sir.

Q And the memorandum which has been handed to the special counsel for the Government and introduced in evidence shows the condition of the case as you found it at that time, so far as anything which you considered material to the case was noted?

A. That contains a memorandum of all that I found of importance in the case at the time those notes were made, and had I observed anything I should certainly have taken note of it.

Q. Did you ever at any time make any note or memorandum in this case which showed a notation upon the side of that list opposite the tracts in question; did you ever have such memorandum?

A. I never had such memorandum and I never had any knowl-

edge that it existed prior to the certification and the making of that memorandum.

Q. Mr. Patterson, the gentleman referred to, was employed by you?

A. He was in some matters.

Q. If any of the papers in connection with the case appear in his handwriting they were prepared as your employé?

A. He was my clerk.

Q. And signed by you?

A. And signed by me.

(Signed) ELLERY C. FORD.

Subscribed and sworn to before me—

JOHN B. THOMPSON,
Special Examiner.

512 Counsel for both parties here ask the special examiner to note upon the record the following stipulation, to wit:

It is stipulated between the parties hereto, special counsel for the United States and counsel for the defendant being present and agreeing, that the further taking of testimony may be, and hereby is, continued until Thursday, April 1, 1886, within which time counsel for the defendant may cross-examine Mr. W. W. Curtis, a witness sworn for the plaintiff, and may also examine two witnesses for the defendant; and it is further stipulated and agreed that special counsel for the United States may have until Saturday, April 3d, 1886, for the taking of testimony in rebuttal.

513 *Pl'ff's Testimony—(Curtis) Cross-Ex.*

THURSDAY, *April 1st*, 1886.

Met at 1 o'clock p. m., pursuant to continuance, and, no further witnesses being produced on the part of the defendant, the cross-examination of WILLIAM W. CURTIS, a witness produced and examined by the plaintiff, is, pursuant to the stipulation of counsel, proceeded with as follows:

By Mr. REDINGTON:

Q. Mr. Curtis, you speak of having filed three arguments before the Commissioner subsequently to the time when you became interested in the case. Were those arguments directed to the question of the canceled desert-land entry?

A. That is my recollection. I think it was between September and January that the arguments were filed, as shown by my previous testimony.

Q. Did they relate to anything else except the desert-land entry?

A. I am not sure that they related to anything else. My recollection is that the arguments were directed to the matter of the application for the restoration of the desert-land entry.

Q. That was all, was it?

A. That is my recollection.

Q. Was that before or after the State selection?

A. It must have been after the State selection. If I remember right the State selection was made in September, 1882.

Q. Then you filed these three briefs, treating only of the canceled desert-land entry, without saying anything or caring anything about the State selection?

A. Of course it was with reference to the defeat of the State selection. I don't remember that the State selection was referred to in the arguments. I can't tell without refreshing my memory by looking at the arguments.

Q. Your idea, then, was to defeat the selection by securing the reinstatement of the already canceled desert-land entry?

514 A. Partly that, but mainly to protect the interest of our clients by securing the reinstatement of the desert-land entry of which they were the owners by purchase from Williams.

Q. But you made no movement at all towards securing a rejection of the State application?

A. I would have to look at the arguments as to that. I am not positive whether the State selection was specially mentioned in the arguments or not. If you will give me time I will look now and see.

Q. It would naturally occur to your mind, would it not, in the conduct of such a case involving such interests, that the State selection would fail naturally by a reinstatement of the desert-land entry?

A. Yes, sir.

Q. So that if in your judgment you succeeded in reinstating the desert-land entry, this would get rid of the State selection without the trouble of any action on the part of the pre-emption division?

A. Yes, sir.

Q. In what division was the desert-land entry matter pending?

A. I think it was in division C.

Q. That is not the division where State selections are considered, is it?

A. Only in part, I believe. As I understand the workings of the office, it is a divided duty between divisions "G" and "C."

Q. What has division "C" to do with the adjudication of a State selection?

A. It has nothing to do with the adjudication of it. Division "G" has the adjudication of such matters.

Q. Then the adjudication of a desert-land entry is in an entirely different division from that in which State selections are adjudicated?

A. Yes, sir; that is my information about it, but I am not perfectly posted as to the routine of business there in the General Land Office in all matters, though I have a general understanding of it.

515 Q. You were chief clerk of the office a good many years?

A. Yes, sir.

Q. And previous to that you were the head of a division?

A. Yes, sir.

Q. Well, during your time of service who had charge of the adjudication of State selections; was it not division "G?"

A. Division G had nothing to do with the adjudication of State selections during my term of office. They were adjudicated on a different and separate desk.

Q. Well, were they adjudicated in division G?

A. I am not sure but what they were. If you will allow me to explain, the divisions received their designation by letters while I was chief clerk under Commissioner Drummond. Previous to that time they had a separate existence as independent divisions.

Q. Now, is it not a fact within your personal knowledge that the entire business of the adjudication of State selections is done in what is known as division G, or the pre-emption division of the General Land Office?

A. Such is my impression, but I am in nowise certain about it.

Q. If that is so, do I understand you to say that in connection with this matter you filed three briefs in the desert-land-entry case in division C of the office without paying any attention whatever to the pending State application in division G or calling that application to the attention of the office?

A. No, sir. You do not understand me that way at all. I filed the arguments in the General Land Office in the first place, not in division C or any other division particularly. The matter of dividing the work there is a matter of office arrangement, with which we have nothing to do. If we address a letter to the General Land Office on any subject, whether pre-emption, desert land, min-
516 eral, or what not, they are merely filed in the General Land Office without being put in any particular division. This is what was done in this case, and after the filing of the arguments all proper precautions were taken to see that no action should be taken on the State selection which would defeat the application then pending for the reinstatement of the desert-land entry.

Q. Mr. Curtis, do you know where in the General Land Office an argument will go that you should now file in a desert-land entry case?

A. No.

Q. Do you not know that it would not go to division G?

A. I should not look for it in that division unless there was conflict with some pre-emption, town site, or some other matter appertaining to that division which would take it there.

Q. Is there anything in your three arguments filed as you have already stated and which you say you are not entirely satisfied as to the course they would take after the filing—is there anything in those three arguments that refers at all to the State selection?

A. I should have to look over the arguments to see. If you will allow me I will go over them now and see.

Q. Did you in connection with that matter and those briefs—and my question relates entirely to the application for the reinstatement of the desert-land entry—did you in connection with that matter and those briefs invite the attention of the General Land Office at all to the State selection?

A. Most assuredly I did.

Q. In those briefs?

A. I don't know as to that. I cannot tell without looking over them, but I did call attention to it in interviews and repeated conversations which I had personally with various officials of the Land Office. If you wish, I will look over the arguments and see. I don't remember a word of the arguments.

517 Q. In addition to those arguments which you filed, I understand you in your testimony to say that you had repeated interviews and conversations and oral arguments with various persons in the Land Office in connection with the matter.

A. Not oral arguments, any more than would occur in a conversational way. I had conversations, however, with various persons in the office in connection with that case, in which the whole iniquity of the proceedings of Mr. Williams was referred to.

Q. Then, if I may put it more correctly, instead of making oral arguments you had conversations with these various persons about the matter?

A. Certainly; in the same way in which we all do business in the General Land Office.

Q. What do you mean by "we all?"

A. We land attorneys that practice before the Department.

Q. With whom did you speak in relation to this matter?

A. I talked with the Commissioner, with Mr. Le Barnes, Mr. Tyssowski, and Mr. Howes, and I think perhaps with Mr. Kohr.

Q. In all of those conversations, of course, you were doing the best you could to secure the reinstatement of this desert-land entry?

A. Yes, sir.

Q. In the absence of counsel on the other side?

A. Yes, sir.

Q. How many conversations did you have?

A. I cannot tell. I did not charge my memory with it at the time, and cannot even approximate it.

Q. Was there any particular reason why you desired that that matter or any matter connected with this case should be adjudicated in one particular division rather than in another?

The WITNESS: Do you mean the matter of the reinstatement of the desert-land entry or the contest between the mill-site claim and the State selection when it afterwards came up as the result

518 of the relinquishment of Williams?

Q. Answer the question, please, as I ask it. I desire to know whether you had any particular reason for having either the desert-land matter or the other matter—the State selection matter—adjudicated in one division rather than in another.

A. As to the first, no; as to the second, yes.

Q. As to the second, the conflict between the mill site and the State selection, there were reasons why you wished to have it examined in one division instead of in another?

A. Yes, sir.

Q. In what division did you want it examined?

A. In division G.

Q. Was that the proper division under the rules for it to be considered in, in the case of a conflict of this kind?

A. I think it was, and my sole reason for desiring it to be passed upon there was that they were accustomed to this matter of State selections and were better qualified to pass upon it than the mineral division.

Q. Were you aware of the fact that all the witnesses in the case — have knowledge on the subject have testified that the mineral division of the General Land Office was the proper one under the rules to consider the case in the event of a conflict of this kind?

A. No; I am not.

Q. When did you first learn that fact?

A. I have not learned it — all, and don't know it now unless I take your word for it.

Q. Have you not examined the testimony in this case?

A. No, sir; I have seen but little of the testimony in this case.

Q. And you don't know what the witnesses have testified to on that point?

A. No.

Q. Are you still of opinion that the pre-emption division was the proper one to pass on that conflict?

519 A. I am still of opinion that the pre-emption division should have passed on it because of their knowledge of State selections.

Q. Are you still of opinion that the pre-emption division, in the event of a contest between a State selection and a mill-site claim, is, under the rules, the proper division to adjudicate the contest?

A. Most assuredly I am. There is no rule that governs as to that so far as my observation goes and acquaintance with the workings of the General Land Office.

Q. Suppose a witness called from the General Land Office and Mr. Howes have testified that the proper division, according to the rules of the office, to consider the contest was the mineral division, would you still think and say that the pre-emption division should consider it?

A. I would say that I was in error as to the practice in the General Land Office.

Q. Would not you think you were wrong in your understanding of the practice of the General Land Office in such matters?

A. Yes; I should. My sole reason for desiring the pre-emption division to pass upon the case was that I saw reasons why they could more intelligently pass upon it than could the mineral division.

Q. Please tell me why the pre-emption division could have better passed upon that mill-site case than the mineral division.

A. In the first place, the pre-emption division is conceded to be the division that has charge of the State selections. They pass upon the regularity of such selections and whether they were properly made of lands subject to such selection. That question was involved in this case. The mineral division has to do with mineral lands alone, but the pre-emption division has to do with many other sub-

jects, and, in the very nature of things, comes in contact with every division of the office and to adjudicate claims arising under the homestead, desert-land, and other laws. The mill-site application did not involve mineral land.

520 Q. Do they ever, under any circumstances, have anything to do with mineral cases?

A. I am not sufficiently acquainted with the workings of the office to say as to that.

Q. Do you remember while you were in the General Land Office and in your subsequent practice at the bar whether it is not a fact that no case of any kind or character involving a mineral question ever goes to any other division than the mineral division?

A. I cannot recall one.

Q. Don't you recollect that there is not one?

A. No; I do not. I have never looked into the question.

Q. Do you know of any strictly pre-emption case that ever went to the mineral division?

A. No, sir.

Q. Suppose a pre-emption claimant who initiated a claim to the public lands and before he procured his entry or patent there should be made an allegation of a mineral character, where would that go? The question of the character of the land would go to the mineral division, would it not?

A. Yes; but the merits of the pre-emption would not go to the mineral division.

Q. Can you give me an instance, either hypothetical or that has ever fallen under your observation, where any case involving a question arising under the mill-site laws, so called, has ever been decided or could be decided under the rules of the office in any division except the mineral division?

A. Oh, yes; I can give you one—this one. Here is a case where there was a State selection, and adverse rights prior in date were set up under a mill-site application. A mill-site entry is not a mineral entry, and the question involved would not be one that would require the technical knowledge of the mineral division as to the character of the land, compliance with the mineral laws,

521 &c. It was simply a question as to whether the mill-site applicants had acquired rights prior in date to the State selection or whether the State selection was in itself legal or was not irregular because of improvements on the land.

Q. I am speaking of the rules of the office. Under the rules of the office can you give me such a case as I have mentioned, either any actual case occurring within your knowledge or a hypothetical case?

A. I can give you no actual case that I can recall to my mind now. The hypothetical case I have given.

Q. The hypothetical case, then, is this one?

A. Yes, sir.

Q. Then in your experience in the Land Office and at the bar this is the only case of the kind that has ever come under your notice?

The WITNESS: Notice of what?

Mr. REDINGTON: I think the question is plain.
The WITNESS: I don't understand it at all.
Mr. REDINGTON: Please have that question repeated.

The question was here repeated as follows:

Q. Then in your experience in the Land Office and at the bar this is the only case of the kind that has come under your notice?

A. Well, I must confess that I am too obtuse to see through the meaning of the question. I have had a great many cases coming under my notice.

Q. I have been trying to ascertain, Mr. Curtis, your understanding of the rules of the office in respect of the place where controversies of this kind should be considered. I have called your attention to the fact that every witness called in the case who has spoken of the matter says that the proper division for its consideration under the rules was the mineral division. I understand you
522 to still hold to the opinion that under the rules this case might properly have been considered in the pre-emption division.

A. Yes, sir.

Q. Now, is this the only case of that character that you can think of?

A. It is the only one that I have ever had anything to do with or that my attention has been called to.

Q. Now, Mr. Curtis, is it not a fact, whether intentionally or not, that it was your desire and effort to have this matter adjudicated in the pre-emption division, while the rules of the office required it to be considered in the mineral division?

A. No, sir; it was not my intention by any manner of means. I merely wished the pre-emption division to consider it because, in view of the questions arising under the State selection, it could be more intelligently passed upon there.

Q. With that right before you, are you now willing to say that, intentionally or unintentionally, you were endeavoring to procure a hearing in this case in a division to which it was not properly consigned under the rules?

A. No, sir; I have no knowledge that there is any rule which prevented consideration of the matter by the pre-emption division.

Q. I regret that, as counsel, you have not been conversant with the testimony taken in the case; but, again reminding you that every witness called from the General Land Office to testify in this case has testified that the mineral division was the proper division under the rules to consider the case, I now again ask you if you are willing to say that, whether intentionally or unintentionally, you were endeavoring to have it considered in a division to which it was not properly consigned under the rules.

A. I will reply to that question, and you can draw your own conclusion. I was endeavoring to have it considered in the pre-emption division because I thought they could better pass
523 upon the questions involved, for the reason that they were peculiarly familiar with the law and the rules governing

State selections. I did not know there was any rule which would prevent this being done. On the contrary, I think the rules would warrant it; but if the rule is otherwise, then your deduction is right.

Q. In all these conversations that you had with the various officers of the Department was this State list or State selection ever brought under your actual notice?

A. I never saw it until after it was certified.

Q. How did you know there was any such thing in existence?

A. We first got our information from our correspondents in New York.

Q. And thereupon, without ever looking for such list or ascertaining its existence, you immediately proceeded to secure the reinstatement of the desert-land entry?

A. Oh, no. I presume we sent one of our clerks over to the General Land Office to inquire about the selection and the facts with respect to it.

Q. And, notwithstanding the large interests involved, you did not examine the list?

A. I did not personally examine the list.

Q. But, merely proceeding upon the information that you had, without knowing from ample inspection what the list consisted of or anything about it, you proceeded with these various movements, filing briefs and having conversations with these various parties, to secure the reinstatement of the desert-land entry?

A. I knew all about it.

Q. About what?

A. The State selection. I knew that the list of selections had been made, and all about the matter.

Q. Did you know that the list had not been signed?

A. No.

Q. Or that there was such a list; that is a fact, is it?

524 A. No, sir; I did know that there was such a list, for I must have sent some of our clerks over to examine and see.

Q. But you don't know that you do?

A. I cannot remember distinctly; but I know how I conduct the business of our office, where from any cause I do not personally examine a matter.

Q. Well, but how do you know there was such a list when you had not seen it?

A. Well, from the simple fact that I knew I would not have gone on arguing the case without having informed myself or received the information that the State selection had been made.

Q. Well, it seems that you were not properly informed about the matter when you did not know that the list had not been signed?

A. I was not; and even those, it seems, who had the list in custody did not know it when they had it certified without being signed.

Q. They had better opportunities for learning than you, too?

A. Yes.

Q. Well, do you think you would have examined the list without noticing that it was not signed by the selecting agent?

A. I might have done it.

Q. Now, Mr. Curtis, did you ever receive any information from the General Land Office from anybody in it in respect of that list in the pre-emption division and its contents?

A. If you want me to specify when or where I should say that I could not.

Q. No; I ask you if, at any time, you received any information from anybody in the pre-emption division as to that list?

A. Really, I cannot tell you.

Q. You mean that you do not recollect?

A. Yes, sir.

Q. Is it possible that the fact that your failure to examine the list was due to communications made to you from the pre-emption division?

A. Verbal communications or written?

525 Q. Verbal.

A. Oh, it might have been either. There was no occasion for my examining the list.

Q. Do you think that as counsel in the case there was no occasion for you to examine a legal title outstanding in your adversary?

A. I knew that the State selection had been made and I was endeavoring to defeat it.

Q. Mr. Curtis, in your testimony you say with reference to the so-called erasure upon list No. 24, in answer to a question of Mr. Burdett, that you did not have anything to do with the erasure, so called, and then added that it would have been to the injury of the parties you represent to have done so.

A. Yes, sir.

Q. Now suppose, Mr. Curtis, that that original endorsement had been put upon the list after it had been listed to the State, to whose interest, then, would it have been to have made the erasure?

A. I could not tell any more than I could tell what might have been if my uncle had been my aunt.

Q. I hold in my hand "Plaintiff's Exhibit N," being a letter of the firm of Curtis & Burdett to Abbett & Fuller, dated February 24, 1883. Is the signature of Curtis & Burdett to that letter in your handwriting?

A. I think not. I think it is in Mr. Burdett's handwriting, but I should——

Q. You have read this exhibit, have you?

A. Well, I would have to read it again to recognize it. (Reading letter.) Yes, sir.

Q. Did you know anything about this letter at the time it was sent?

A. I dictated it.

Q. You dictated it?

A. Yes, sir. It is sometimes customary for Mr. Burdett to sign the letters and sometimes for myself.

Q. In this letter I find the following: "You will observe the

closing sentence in the Commissioner's decision, and in an interview had to-day with the clerk who wrote up this decision it was hinted that our remedy lay in opposing the State selection." Who
526 was the clerk that wrote that letter?

A. Mr. Le Barnes.

Q. Mr. Le Barnes?

A. Yes, sir—that is, whether he individually wrote it up or not I am not sure, but he authorized the writing of the letter, and it was with him that I had the conversation.

Q. Then I understand you to say that after that decision was made, in conversing with Mr. Le Barnes, who wrote or who had authorized the writing of the decision, that he suggested to you the remedy which you should pursue?

A. Oh, not in so many words. He called my attention to the closing part of the decision and, as I said in my letter, hinted that that was our method of protecting ourselves.

Q. Is Mr. Le Barnes the law clerk of the General Land Office?

A. Yes, sir.

Q. I find further down in the letter this: "We have to-day been engineering to transfer the fight to the pre-emption division, and think we have succeeded." What did you mean by engineering?

A. Endeavoring.

Q. Endeavoring?

A. Yes.

Q. Do you commonly apply the term "engineering" in such matters in your practice before the bar?

A. In a dictated letter I use the first word that comes to the end of my tongue.

Q. You mean by "engineering" that you were using such legal measures *are* were necessary for the purposes of your case?

A. Such proper methods; yes.

Q. Persuasive methods?

A. Proper methods.

Q. Certainly; you were entitled to them. Well, how did you engineer it?

A. My recollection is that I simply asked that it might be done—the case sent to the pre-emption division—for the reasons that I have given in this examination.

Q. All that without the knowledge of the other side?

A. Yes, sir.

Q. And that was all the engineering that was done?

A. Yes, sir.

527 Q. What makes you think that you had succeeded?

A. Well, I don't know now, but I got the impression at the time.

Q. From whom did you get it?

A. My impression was received from the Commissioner or Mr. Le Barnes. I cannot recollect distinctly, for I did not charge my mind with it after writing the letter. I felt fearful all the time that the cases might be taken up and acted upon independently of each other, and I wanted to get them concentrated in one single

division, and, as I thought the pre-emption division was better qualified to act upon the questions involved, I wanted them sent there.

Q. And you were perfectly willing for it to go into the division containing the State selection which you had never examined?

A. Yes, sir; perfectly.

Q. I now hold in my hand Exhibit M, which is composed of the letter of L. B. Ward to Curtis & Burdett, and the answer thereto signed W. W. Curtis. That is your signature to that letter, is it?

A. Yes.

Q. The letter from Mr. Ward to you mentions the mill-site case. Does it mention anything else?

A. I cannot tell without I re-read it.

Q. Please look at it and see if it mentions anything else except the mill-site case.

A. (After reading letter.) It speaks also about certain water rights.

Q. Water rights connected with the mill-site case?

A. They are incidentally mixed up in this whole controversy.

Q. Was there anything about water rights pending before the Department at that time?

A. There was in connection with this desert-land entry.

Q. Then the letter, so far as it affects this controversy, related to the mill-site application?

A. Yes, sir.

Q. That was August 22, 1883?

528 A. Whatever the date of the letter is.

Q. Where was the mill-site application then?

A. In the mineral division, it seems.

Q. On the back of this letter appears this endorsement: "My understanding is that this case was to be taken up. N. C. McF." Is that in the handwriting of the late Commissioner?

A. Yes, sir.

Q. Now, Mr. Curtis, was not that letter presented to the Commissioner, referring simply and solely to the mill-site application, and that endorsement procured for the purpose of having that mill-site application taken up and decided in the mineral division?

A. At no time, from the beginning to the end of that conversation, was the mill-site case spoken of, urged, or was the endeavor made to have that acted upon independently of the State selection.

Q. Then why did you present the letter of Ward to the Commissioner and procure this endorsement when the letter referred only to the mill-site case?

A. Because the two were so intimately connected with each other that it was known, not only to myself but to the Commissioner and every one that had had anything to do with the cases, that it involved also the decision upon the State selection.

Q. Now will you answer my question? I ask why was this letter of Ward's, which referred simply and solely to the mill-site application, shown personally to the Commissioner and this endorsement

procured in order that the mill-site case might be taken up in the mineral division?

A. I never asked that it be taken up independently of the State selection.

Q. Whether intentionally or not, when you presented the letter referring alone to the mill-site case it necessarily involved a decision upon it by the mineral division. Is not that so?

A. I will say again that that letter never was presented for
529 the purpose of procuring action on the mill-site case independently of the State selection.

Q. Then your answer is no, is it not?

A. I have given my answer.

Q. Did you ever get the mill-site application made special?

A. I got the whole case made special.

Q. Please answer my question. Did you ever get the mill-site application made special?

A. I repeat that I got the whole case made special. I had no object in having the mill site acted on alone. I had the entire case made special.

Q. Then you refuse to tell me whether you ever got the mill-site case made special?

A. I have stated that I got both made special.

Q. That is all you will say about it?

A. Yes, sir.

Q. Look at Exhibit D and tell me if it is not marked special and whether that special marking does not indicate that the matters contained in that particular paper are to be made special.

A. This blue-pencil annotation?

Q. I mean the special mark; yes, that in blue pencil.

A. It means that this case was to be made special.

Q. That paper was in the mineral division?

A. Yes, sir; what was with it I do not know—rather I do know.

Q. Then we have it that you do know what was with it?

A. Yes.

Q. Was this State selection with it?

A. I understood it was—that is, I understood that a protest against the approval of the State selection which we had filed in the General Land Office had been referred by division G to division N.

Q. I don't want any misunderstanding about this. Do you mean to say that when this paper was marked special that the State selection list was in the mineral division?

A. I cannot tell; I presume it was not.

530 Q. Do you know that any other papers connected with it were there?

A. At that particular time I would not like to say, but the protest which we had filed, as I understood, had been sent to the mineral division.

Q. Looking at this Exhibit B, you are willing to state that you presume that in making that case special the State selection was also made special?

A. Yes, sir.

Q. Now please look at this Exhibit B, which is list No. 24 of State selections, and tell me if anywhere on that paper you find a special mark.

A. No.

Q. Now don't you know that all those papers with Exhibit D were in the mineral division and that Exhibit B was in the pre-emption division at the time the mark "special" was made on Exhibit D?

A. I do not know any such thing, though I did not see the list at that time. I understood, however, that in making the mill-site case special the entire case was to be considered and decided under that order.

Q. Why did you not file this letter of Mr. Ward in the Department?

A. For the simple reason that it was one of our private files, and for that reason I did not want to file it.

Q. But you brought it to the Commissioner?

A. Yes, sir.

Q. Instead of filing it you brought it to him?

A. Yes, sir; but I did something else. I took the letter to Mr. Tyssowski, and, as it would not be sufficient authority for him to act without leaving it, we either went to the Commissioner or the Commissioner sent for him and directed that the case be made special.

Q. Now your answer to this letter I hold in my hand. Will you tell me how it came to be signed by you personally instead of by the firm?

A. I frequently write personal letters, and so does Mr. Burdett, about the firm business. There was no special reason
531 for so signing the letter in this case.

Q. In this answer of yours, personally dictated, I find this: "I find on inquiry at the Department that owing to the absence of clerks and the press of business little or no progress had been made with the mill-site case in the mineral division."

A. Yes.

Q. Had you made any inquiries to find how the State application was progressing?

A. No; I do not now remember that I did. My main inquiries were to see that there was no progress in it.

Q. You did not know at this time that the list had been certified to the State?

A. No, sir.

Q. And you made no inquiries with reference to the progress of that list in order to make your report to Mr. Ward?

A. My main object was to prevent progress in that list.

Q. You, in this letter, also refer to the mill-site case. Why make you no reference to the State selection case?

A. I can explain that in a few words. We had three, four, five, or more cases from the same clients involving lands in the same vicinity and we took the shortest method of designating each particular case when writing, and we were writing about the various

cases at different times, hence this controversy was designated the mill-site case.

Q. You had no reference, then, to the mill-site case alone in making up that report?

A. No, sir; we had reference to one of the several controversies.

Q. You further say: "I was considerably disappointed at this, as you will be, and to-day had the Commissioner send for the chief of the division and give positive instructions that it should be taken up and decided. I am now assured that it will be put in hand to-morrow." All that is a fact, I presume?

A. I presume so.

Q. Have you any recollection about it?

532 A. Only as I refresh my mind about it from this letter.

Q. Had you conversations at that time with the Commissioner or anybody else in regard to the matter?

A. Most assuredly I did at the time the annotation was made on the other letter.

Q. You went to the Commissioner and exhibited this letter of Mr. Ward to him, as I understand. The Commissioner then sent for the head of the mineral division and directed him to take up the case. That is right, is it?

A. Yes, sir.

Q. And this was without notice to counsel on the other side?

A. Altogether.

Q. You further say in the letter, "The Commissioner also gave instructions to consult with the chief of the pre-emption division as to the State location." The pre-emption division was the division you desired it to go to?

A. Yes.

Q. You were willing that the whole case should be considered in that division?

A. Yes, sir.

Q. Why did you give it up when it was determined that the mineral division should act on it?

A. Because I had no control over the action of the General Land Office. I desired the pre-emption division to act on the case for the reason I have stated. I knew of no rule which required it to be sent to the mineral division, though I find as a matter of fact that it was sent there.

Q. Is it not a fact that the rule did require that it should go to the mineral division?

A. No, sir; it is a fact to this extent and no further, that I find that the case had been sent to the mineral division for action.

Q. I now read this further from your letter: "I know from frequent conversations with the latter officer that he will advise that the State location of Williams be disallowed." Did you mean by "the latter officer" the head of the pre-emption division last

533 above referred to?

A. I presume I did.

Q. Look at your letter and see.

A. (Witness examining letter.) I mean him.

Q. Who?

A. Mr. Howes, the head of the pre-emption division.

Q. Does this letter state the fact when it says that you had frequent conversations with Mr. Howes, and that in advance of consideration and decision of the case he had told you that he would advise the disallowance of the State selection?

A. I mean that I had received similar information not only from Mr. Howes, but from Mr. Le Barnes and the Commissioner also.

Q. I would be glad if you will answer my question just as I have put it. Is it true that you had repeated conversations with this head of the pre-emption division in advance of the time when he had the case in his division, and that he had said that he would advise the disallowance of the State selection?

A. I do say yes.

Q. Were those conversations the usual method of attending to business of this kind?

A. Yes, sir; suggestions of this kind are sometimes received.

Q. And in all these conversations this gentleman had told you that he would decide the case in your favor?

A. No, sir. He did not say anything of the kind, but he gave his opinion as to the validity of that State selection and was satisfied from the facts surrounding it that the State selection was illegal and invalid.

Q. How did he give that opinion?

A. It came in the ordinary course of conversation. I left nothing undone to ascertain the exact status of affairs there, whenever we should receive letters from our clients especially.

Q. Without any criticism of the methods which you adopted in the General Land Office, according to this testimony, am I
534 — understand you to swear that in this case you had repeated conversations with Mr. Howes, the head of the pre-emption division, and in those conversations he assured you, in the absence of opposite counsel, that when he got hold of the case he was going to recommend the rejection of the State application?

A. I do not know that he put it as strongly as that, but he gave his opinion that the State selection was illegal and invalid. Of course, he was advised as to the iniquitous methods used by Williams in this case.

Q. Now, what particular methods do you refer to in your last answer?

A. The methods which were taken by Williams to defeat his own desert-land entry, and thereby defeat the title he had made to Matthiessen and Ward of the land covered by his desert-land entry.

Q. Then, in your judgment, your opinion of Williams' proceeding in the matter of his controversy with your clients justified you in advance of the case being taken up in talking promiscuously with officers of the Department and procuring from them expressions of opinion in favor of your side of the case?

A. Yes; and such opinions I sometimes get now round at the Secretary's office.

Q. How is that?

A. I do the same thing round at the Secretary's office now, and intend to keep on doing it.

Q. I understand you to say that you are in the habit of doing that thing round at the Secretary's office and intend to keep on doing it?

A. Yes, sir; I mean to get the opinion of the officer as to what the decision will be whenever practicable and proper.

Q. That is what you professionally call engineering, is it?

A. No, sir; it is something I have known to be done under every administration.

Q. Done by whom?

A. By the officials.

Q. I do not understand your last answer.

A. Well, I have known in many cases beforehand—where
535 they have told me beforehand that they could not decide for us.

Q. Then arises the necessity for engineering?

A. Oh, no; oh, no; the time for engineering is then past; professional skill might come in.

Q. Professional skill?

A. I knew what the decision in the desert-land entry was going to be before it was promulgated.

Q. You did before you put in your argument, didn't you?

A. No, sir.

Q. Then, if I understand you correctly, professional skill ranks one grade higher than engineering in the land practice?

A. You may draw your own conclusion.

Q. I am glad to find out the technical rule. I find further on in this letter the following: "I had strong assurances that the matter would be hurried through." What did you mean by that?

A. That it would be expedited, I presume.

Q. Expedited?

A. Yes.

Q. In what grade does expedition come in the practice of the Land Department?

A. Well, the truth of it is that I do not exactly understand you.

Q. Does it rank higher or lower than engineering?

A. If you will tell me just in what rank engineering is I will be able to answer.

Q. Well, the only thing I know about it is the impression that I got from what you said. Well, will you tell me again what did you mean by "I had strong assurances that the matter would be hurried through."

A. Yes, sir.

Q. Well, tell me.

A. That the case would be taken up and expedited without further delay.

Q. Then, if I understand you, Mr. Curtis, this case was so difficult as to require three things, engineering, professional skill, and expedition?

536 A. Well, if you have understood me that way you have understood what I have not said. I do not know of any case

that does not require something of the same kind, according to the force of the meaning you give to the words. In fact, with the adversaries we had to deal with you might add a fourth class, a little rascality.

Q. Do I understand you to deny that any rascality was practiced on your part?

A. Yes.

Q. Well, I think that is a matter of inference. Do you know the special examiner who is taking the testimony in this case?

A. Yes, sir.

Q. What, if any, connection has he with your firm?

A. He has his office in our office and is in part in our employment.

Q. He is in the employ of your firm, and his place of business is in your rooms?

A. Yes, sir; he has his own business aside from ours, as you may see by his sign on the door as an attorney-at-law.

Q. As to that I don't wish to make any inquiry. Do you know, Mr. Curtis, where the original papers belonging to the files of the Department have been since they were introduced into this case as exhibits?

A. No, sir.

Q. You don't know?

A. Never for an instant; but of course I do when they are before me here.

Redirect examination by Mr. BURDETT:

Q. Your attention was called, Mr. Curtis, to a pencil endorsement in the handwriting of Commissioner McFarland on the back of a letter to the firm of Curtis & Burdett, and also to an endorsement in blue pencil on the back of "Plaintiff's Exhibit D," which is "Aug. 23, '83, special. N. C. McF.;" and you were asked in substance if you had not been making special effort to have the mill-
537 site case taken up and decided by itself. Will you look now at Exhibit D, at the memorandum in red pencil attached thereto, and state the date and contents of that memorandum?

A. (Witness reading.) "By direction of the Commissioner this case must be considered in connection with the State selection of the same land; list in pre-emption division. Feb. 24, '83."

Q. When you saw the Commissioner with respect to having the mill-site case taken up, in August, 1883, were you aware of the existence of the order of the Commissioner which is evidenced by that memorandum of February 24, 1883?

A. That is the date of my answer to Mr. Ward. My recollection is that I took the letter of Mr. Ward to the Commissioner, who first made the annotation which now appears on the letter; that as I did not wish to leave the letter and the simple showing of it to the head of the mineral division and not leaving it would not be sufficient authority to him to take the case up and act on it out of its order, that he went to the Commissioner or was sent for by the Commissioner and the order was given to him by Mr. McFarland.

Q. Then this order of August 23, 1883, is the one you refer to?

A. That is my recollection of it.

Q. Then I understand you that when you asked to have the mill-site case taken up, in August, 1883, you did so in view of the fact and with the knowledge that it had already been affirmatively ordered that the mill-site case and the State selection case, whenever taken up, should be taken up and decided together?

A. Yes, sir. I suppose that in the course of the whole case I asked a half dozen times that that should be done, my principal fear being that the State selection might be acted on independently of the mill-site application—the very thing which was done.

Q. In answer to questions you have related your conversations with Mr. Howes, the head of the pre-emption division, and
538 stated the fact that he gave it to you as his judgment that the State selection would not be finally approved. You may state whether or not you saw the Commissioner and the principal law clerk upon that question; and, if they gave to you their conclusion upon that pending matter, state what it was.

A. They stated practically the same as indicated in the conversations I had with Mr. Howes. There seemed to be no hesitation whatever on their part to speak about it, and I never had a doubt on my mind as to what the decision would be when the case was reached.

Recross-examination by Mr. REDINGTON:

Q. When did you first see this memorandum of February 24, 1883?

A. I cannot tell you.

Q. Can you give me any idea?

A. No, sir.

Q. Was it before or after August, 1883?

A. I cannot tell. In fact, I don't remember as to when I have seen the memorandum; I have seen it before; but when or where or under what circumstances I cannot tell.

Q. Then when you went to see the Commissioner in August, 1883, and exhibited to him Mr. Ward's letter, was it then that this word "special" was written on the back of this paper?

A. I cannot tell when that was written. I would hear the orders given by the Commissioner, but I did not follow up the Commissioner to see that he actually did what he said he would do.

Q. When you procured the Commissioner, in August, 1883, to make the case special, after exhibiting to him Mr. Ward's letter, did you know that this memorandum of February 24, 1883, which is attached to Exhibit D, had been made?

A. I don't know about the memorandum. I do know that the order had been made which is contained in that memorandum.
539 Q. Then you don't know whether that memorandum was attached at that date or not to Exhibit D?

A. Did you say Exhibit D, and whether it was attached in August, 1883?

Q. Yes.

A. I truly don't recollect.

Q. Then from your answer to Mr. Burdett's last questions it is not to be understood that at that interview of August, 1883, that memorandudum of February, 1883, was called to your attention as being attached to that letter?

A. No; I do not know that it was.

Q. I want to see if I correctly understand you, and for that purpose I want to ask a question that I have asked before. Do I understand you to say that the Commissioner of the General Land Office, the law clerk, Mr. Le Barnes, and Mr. Howes all told you during one or more of those conversations that you have testified to that when the case came to be considered as between the mill-site application and the State selection that they would reject the State selection? Now, if am wrong about that I want to be set right.

A. Well, you are not altogether wrong. What they did tell me was that that State selection would not be allowed.

Q. Then I understand you to say that in these conversations all three of those gentlemen told you that when the case came to be considered the State application would not be allowed.

A. I do not know that they said it in just that way. When I say that they gave their opinion that the State selection would not be allowed I do not give their precise words, and still those were the identical words that one of them used.

Q. Were those the words of the others also?

A. In substance the same.

540 Second redirect examination by Mr. BURDETT:

Q. Well, Mr. Curtis, do I understand you to say at this time that the matter of the validity of that State selection had not been considered? Is it not the fact that at the time you had these conversations referred to with the Commissioner and the others that the matter had been under consideration?

A. Yes; it had been under consideration. The case was one well understood by the Commissioner, Mr. Le Barnes, and Mr. Howes. The proceedings that had taken place prior to the State selection and the object that the party who made the State selection had in view were well known, and the whole matter had been talked over again and again and again in frequent conversations about it.

Third cross-examination by Mr. REDINGTON:

Q. And all had been talked over between you and those gentlemen?

A. Yes, sir.

Q. And without notice to the other side?

A. Yes, sir.

(Signed) WILLIAM W. CURTIS.

Subscribed and sworn to before me—

(Signed) JOHN B. THOMPSON,
Special Examiner.

The counsel for the defendant here announce their case closed.

541 DISTRICT OF COLUMBIA, *City of Washington*, } *ss:*

I, John B. Thompson, special examiner or commissioner, appointed by the circuit court of the United States for the ninth circuit and district of Nevada, hereby certify that the foregoing testimony was taken down in short-hand in the presence of and from the statements of the witnesses; that, it having been by me reduced to writing on the type-writer, it was then and there by me read over to the witnesses and by them subscribed in my presence and in the presence of counsel for the plaintiff and of counsel for the defendant, who were then and there attending, the said witnesses having been by me first duly sworn to testify the truth, the whole truth, and nothing but the truth touching the matters in issue in said cause.

I further certify that I am not of counsel for any of the parties to said cause or in any manner interested therein.

(Signed) JOHN B. THOMPSON,
Special Examiner or Commissioner.

Endorsed: Published by order of court and filed Nov. 1, 1886. T. J. Edwards, clerk.

542 In the Circuit Court of the United States for the Ninth Circuit and District of Nevada.

UNITED STATES, Plaintiff,
v.
JOSEPH T. WILLIAMS, Defendant. } In Equity.

Be it remembered that at an examination of witnesses begun and held on the first day of April, A. D. 1886, when the within testimony was taken, I, John B. Thompson, special examiner or commissioner, did cause to be personally present at my office, No. 925 "F" street northwest, in the city of Washington, District of Columbia, John A. Hirth, to testify on the part of the plaintiff in a certain cause now pending in the circuit court of the United States for the ninth circuit and district of Nevada, wherein The United States is plaintiff and Joseph T. Williams is defendant.

543 In the Circuit Court of the United States for the Ninth Circuit and District of Nevada.

UNITED STATES, Plaintiff,
v.
JOSEPH T. WILLIAMS, Defendant. } In Equity.

Met at the office of the special examiner, No. 925 "F" street northwest, Washington city, District of Columbia, at 3.30 o'cl'k p. m., April 1, 1886.

Present: S. S. Burdett, Esqr., special counsel representing the Attorney General, for the plaintiff, and James K. Redington, Esqr., and E. C. Ford, Esqr., for the defendant.

Whereupon, pursuant to the stipulation of counsel for the respective parties, the following testimony in rebuttal is taken on the part of the plaintiff:

JOHN A. HIRTH, a witness produced, sworn, and examined on the part of the plaintiff, says as follows:

By Mr. BURDETT:

Q. Please state your name, age, occupation, and place of residence.

A. John A. Hirth; 32; clerk in the General Land Office; residence, 1445 Pierce Place northwest, Washington, D. C.

Q. How long have you been a clerk in the General Land Office and what were your particular duties on and about February, 1883?

544 A. I have been a clerk in the General Land Office since January 1st, 1875, and in February, 1883, I was engaged as a posting clerk, to the best of my recollection, on the Colorado and Nevada desk, in the General Land Office.

Q. I now hand you a paper which is marked "Plaintiff's Exhibit B," being list No. 24, State of Nevada. Please examine the paper and state if you have ever seen it before, and where.

A. I saw it, I suppose, at my desk in the General Land Office on the day, February 7, 1883, I posted the list on the tract book.

Q. Will you state whether there are upon that paper, either on its back or upon its body, any notes or annotation made by you.

A. On the back of the list I have noted, in ink, "Posted February 7, 1883," over my initials, and on the body—the face of the list—I have noted opposite two selections, in pencil, one a reference to a letter to Leon Abbett, dated "C," March 9, 1882, and another notice of conflict of a State selection with a pre-emption filing.

Q. Will you be good enough to give the description of the tracts opposite to which your note of the letter to Leon Abbett was made?

A. The east half of the southeast quarter of section thirty-three, township eight north, range fifty east. I notice a description here of the west half of the southwest quarter of section thirty-four, which is connected with the first description by a bracket. Whether or not the bracket was made by me I cannot say. I should think it was, because under the note, "See letter to Leon Abbett, 'C,' M'ch 9, 1882," is the word "do.," meaning ditto, which is in my handwriting, and I guess the brackets were made by me. That reference to the letter to Leon Abbett refers to those two tracts.

Q. When did you again see that list?

545 A. To the best of my recollection I again saw it within a month or six weeks. I cannot recollect the day when I saw it in this office.

Q. You refer to a time when it was handed to you by S. S. Burdett, special counsel for the United States in this case?

A. Yes, sir.

Q. Between the time when you had it in your possession for posting purposes and the time when you saw it as handed to you by Mr. Burdett had you possession or custody of it?

A. I had not. The list immediately after being posted was returned to the division from whence it came.

Q. Then at what date was it that the pencil memorandum you have described containing the name of Leon Abbett was put upon the paper by you?

A. The presumption is that it was made on the day the list was posted.

Q. And that day is marked on the back of the list?

A. Yes, sir; February 7th, 1883.

Q. How did you happen to make that note?

A. Without being positive about that, my recollection don't serve me well as to that, but the presumption is that it was taken from the tract book.

Q. Have you looked at the tract book to see?

A. No, sir; I have not; but when lists of that class were posted any conflict or any reference to any letters that might appear on the tract book at the time of the posting it is usual to note on the list by the person posting it.

Cross-examination waived.

(Signed) JOHN A. HIRTH.

Subscribed and sworn to before me—

(Signed) JOHN B. THOMPSON,
Special Ex'r.

Counsel for the respective parties here announce the case closed.

546 DISTRICT OF COLUMBIA, } ss:
City of Washington, }

I, John B. Thompson, special examiner or commissioner, appointed by the circuit court of the United States for the ninth circuit and district of Nevada, hereby certify that the foregoing testimony was taken down in short-hand in the presence of and from the statements of the witness; that, it having been by me reduced to writing on the type-writer, it was then and there by me read over to the witness and by him subscribed in my presence and in the presence of the counsel for the plaintiff and of counsel for the defendant, who were then and there attending, the said witness having been by me first duly sworn to testify the truth, the whole truth, and nothing but the truth touching the matters in issue in said cause.

I further certify that I am not of counsel for any of the parties to said cause or in any manner interested therein.

(Signed) JOHN B. THOMPSON,
Special Examiner or Commissioner.

Endorsed: Published by order of court and filed Nov. 1, 1886. T. J. Edwards, clerk.

[Endorsed:] Rec'd Apr. 15, 1886.

37—157

547 DEFENDANT'S EX. A (WASHINGTON).

Before the Hon. Commissioner of the General Land Office.

In the Matter of the Application of the STATE OF NEVADA to select the E. ½ of S. E. ¼, sec. 33, tp. 8 north, range 50 east, M. D. M.

To the Hon. Commissioner:

SIR: In this case we have been served with an argument *in extenso* of Messrs. Curtis and Burdett, counsel for Messrs. Matthiessen and Ward, claimants of a certain alleged mill site, which is said to cover a portion of the above-described ground. This argument, briefly stated, can be said to cover three heads:

First. A general charge of misconduct against the local officers.

Second. That the act of June 16, 1880, under which the application is made, applies only to unappropriated lands.

Third. That the land at the date of the application in question was in the possession and occupation of their clients, and consequently not within the terms of the act. To this we may add
548 that they have attached the general issue plea, a denial of all right of the State of Nevada to select any lands under the act of 1880 except such as were entirely vacant at the date of its passage.

Under the first head we have merely to say that we are unable to find anything, even giving the counsel's own exhibits their full weight, that tends to show any partiality or misconduct on the part of the local officers. They are supposed and legally must, in the transaction of the duties of their office, know nothing outside of their official records, nor are they bound or expected to accept or act on Dame Rumor's information as to what may be or may not be the claim of any party or parties to any piece of land.

The official records were before them, and parties not appearing thereon were from them entitled to neither notice nor recognition. Messrs. Matthiessen and Ward were not until some time subsequent, and until after the selection by the State, when their present mill-site application was presented, claimants of record, and until
549 then any information extended to them by the local officers was a matter of courtesy and not a right they could demand.

Under the second head we have to suggest that at the date of the application by the State of Nevada the tract in question was vacant upon the books of the local land office, no claim of record or right appearing to it. It was then legally unappropriated, and as such subject to the selection. The previous application by the desert-land entry of J. T. Williams was severed by his relinquishment and subsequent cancellation, when the land reverted to the public domain and became subject to appropriation by the first legal applicant in this case, the State of Nevada.

Under the third head the claim is that the land in question was at the date of selection in the possession and occupation of counsel's clients, and consequently not coming within the meaning of the act.

To this we will briefly reply, admitting, for the purposes of the

argument, that they may have had possession, that such possession was not legal. They were there under no right asserted before
550 the Government, nor up to the time of the cancellation of the desert-land entry of J. T. Williams by the permission of the owner thereof; and while it may possibly be true that they entered upon the land in the beginning under the terms of a contract, yet such contract had been broken and was null and void long before the cancellation of said desert-land entry, and their possession and occupation was but a trespass, under which they can now claim no rights whatever. So far as your authorities go—and they are numerous—unless there is a legal appropriation of the land it is subject to any of the laws governing the disposal of the public domain.

While under this head we would say that as a matter of fact the claim of counsel that Matthiessen and Ward are and have been in possession of the tract in dispute is erroneous, and, should it become a necessary factor in the case, we can, by abundant proof, show that such is the case. On the contrary, the land is and has been under cultivation and in the possession of parties other than them-
551 selves, and who will, when the proper time arrives, perfect their legal title to the land.

We come now to the last, though in reality in their view their strongest, point—that the grant of June 16, 1880, was a grant *in præsenti*. In other words, that on that date there was given to the State of Nevada two million acres of land, the selection of which was to be made in some indefinite time in the future, but the right and title to which lands so selected passed to and became vested in the State as of date of the passage of the act, to the exclusion of any rights which might be laid between the date of such passage and that of the selection.

Counsel quote the granting clause of said act, but they fail to of that portion which reads, "The lands herein granted shall be selected by the State from any unoccupied," &c., and to this portion you must look in giving force and effect to said act. The grant in question was one of quantity, not defined as to description, but, on the contrary, with a condition attached that the grantee should select, should identify the particular portions, and until such
552 identification was had no claim or right of the State attached.

Up to that time the grant was in the nature of a float and, until the selection defined the tract, had no effect except as regarded the quantity. When the selection in question was made the land covered thereby was unoccupied, unappropriated non-mineral land of the United States, and consequently subject to the selection. At this date the right of the State actually attached, and all claims subsequently set up must necessarily fail.

We ask that you shall so hold.

Respectfully submitted.

E. C. FORD,
Attorney for State of Nevada.

Endorsed: General Land Office, May 7, 1881. 41995. E. C. Ford, city. Files answer to argument of Curtis & Burdett in the

application of State of Nevada to make certain selection as described. Nov. 19, '83. Referred to div. G. D. E. F. C. A. B. 32–341. Defendant's Exhibit A. John B. Thompson, special ex'r. Filed Nov. 1, 1886. T. J. Edwards, clerk.

553 "*Memorandum by E. C. Ford.*"

List 24.

UNITED STATES LAND OFFICE,
EUREKA, NEV., *Sept.* 16, 1882.

I hereby certify that the foregoing list was posted in this office on the 2 day of September, 1882, and that the selections are correct, and that no valid conflicting right is known to exist, and that the legal fees thereon, amounting to $24.00, have been paid by the State.

F. H. HINCKLEY, *Register.*

H. CARPENTER, *Receiver.*

STATE LAND OFFICE,
CARSON CITY, NEV., *Aug.* 31, 1882.

I hereby apply on behalf of the State of Nevada for the tract described in this list as being selected for said State under the act of Congress approved June 16, 1880.

A. J. HATCH,
Selecting Agent,
By J. W. FASSETT, *Deputy.*

Endorsed: List 24, State of Nevada. Posted Feb'y 7, 83. "Memorandum by E. C. Ford." John B. Thompson, special examiner. Filed Nov. 1, 1886. T. J. Edwards, clerk.

554 *Pl'ff's Testimony (Nevada).*

In the Circuit Court of the United States, Ninth Circuit and District of Nevada.

THE UNITED STATES, Complainant,
v.
JOSEPH T. WILLIAMS, Defendant.

Be it known that on this 18th day of January, A. D. 1886, pursuant to written stipulation of solicitors for the respective parties, personally appeared before me, T. J. Edwards, a commissioner of the circuit court for the district of Nevada, at my office, in Carson City, J. W. ADAMS, a witness produced by complainant and on its behalf, who, being by me first duly sworn to tell the truth, the whole truth, and nothing but the truth, deposes and says:

(The testimony of said witness was taken by consent of plaintiff and defendant without previous notice, T. Coffin, U. S. district attorney, and J. D. Torreyson, Esquires, of counsel for complainant, and T. W. Healy, Esq., solicitor for defendant, being present.)

555 I am the Governor of the State of Nevada, and in my official capacity as such Governor received and sent the telegrams of which the following are true copies at the times shown upon the face of said telegrams. The telegrams purporting to have been received by me are the originals. Those purporting to have been sent by me are office copies kept by me at the time of sending them, and are all concerning the approval to the State of Nevada of the E. ½ of S. W. ¼ of sec. 33 and W. ½ of S. W. ¼ of sec. 34, T. 8 N., R. 50 east, the lands in controversy in this action.

Telegrams are here offered in evidence, marked respectively Exhibits Nos. 1, 2, 3, 4, 5, 6, 7, & 8, and are as follows:

(This offer was objected to by Mr. Healy, defendant's solicitor, upon the ground that the purported telegrams were copies, not the originals, and not the best evidence.)

556 PL'FF'S EX. No. 1. T. J. Edwards, Com'r.

Telegram.

(Printed heading omitted.—Clerk.)

Received at Carson Dec. 17th, 10.50 a. m.
Dated Washington, D. C., — 17, 1883.

To Hon. J. W. Adams, Governor of Nevada, Carson, Nev.:

Somebody here hostile to claimants of mill site erased marks on our list opposite tract in controversy, which would have prevented its certification at least until case was decided. The adverse claim is a mill site made by Matthiessen and Ward, upon which improvements have been made, as alleged, at a cost of about seventy thousand dollars.

H. M. TELLER, *Sec'ty.*

PL'FF'S EX. No. 2. T. J. Edwards, Com'r.

Telegram.

(Printed heading omitted.—Clerk.)

Received at Carson Dec. 11, 2.30 p. m.
Dated Washington, D. C., — 11, 1883.

To Governor of Nevada, Carson City, Nev:

East half southeast quarter section thirty-three and west half southwest quarter section thirty-four, township eight north, range fifty east, inadvertently approved May third last in clear list
557 number three, Eureka, Nevada, under two-million-acre grant. Please return approved list.

W. C. McFARLAND, *Cash'r.*

PL'FF'S EX. No. 3. T. J. Edwards, Com'r.

Form No. 2.

The Western Union Telegraph Company.

All messages taken by this company are subject to the following terms:

To guard against mistakes or delays the sender of a message should order it repeated—that is, telegraphed back to the originating office for comparison. For this, one-half the regular rate is charged in addition. It is agreed between the sender of the following message and this company that said company shall not be liable for mistakes or delays in the transmission or delivery or for non-delivery of any unrepeated message, whether happening by negligence of its servants or otherwise, beyond the amount received for sending the same, nor for mistakes or delays in the transmission or delivery or for non-delivery of any repeated message beyond fifty times the sum received for sending the same, unless specially insured, nor in any case for delays arising from unavoidable interruption in the working of its lines or for errors in cipher or obscure messages; and this company is hereby made the agent of the sender, without liability, to forward any message over the lines of any other company when necessary to reach its destination.

Correctness in the transmission of message to any point on the lines of this company can be insured by contract in writing, stating agreed amount of risk and payment of premium thereon, at the following rates, in addition to the usual charge for repeated messages, viz., one per cent. for any distance not exceeding 1,000 miles and two per cent. for any greater distance. No employee of the company is authorized to vary the foregoing.

No responsibility regarding messages attaches to this company until the same are presented and accepted at one of its transmitting offices, and if a message is sent to such office by one of the company's messengers he acts for that purpose as the agent of the sender.

Messages will be delivered free within the established free-delivery limits of the terminal office. For delivery at a greater distance a special charge will be made to cover the cost of such delivery.

The company will not be liable for damages in any case where the claim is not presented in writing within sixty days after sending the message.

NORVIN GREEN, *President.*

THOS. T. ECKERT,
General Manager.

Receiver's No.	Time filed.	Check.

Send the following message subject to the above terms, which are hereby agreed to:

CARSON, NEB., *Dec.* 13, 1883.

To N. C. McFarland, Commissioner of Land Office, Washington, D. C.:

The register of the land office, by advice of the attorney general, declines to return the clear list, as requested by you. He considers it his legal duty to patent the land referred to by you unless restrained by the court.

J. W. ADAMS, *Governor.*

Read the notice and agreement at the top.

558 PL'FF'S EX. NO. 4. T. J. Edwards, Com'r.

Telegram.

(Printed heading omitted.—Clerk.)

Received at Carson Dec. 14, 4.03 p. m.
Dated Washington, D. C., —— 14, 1883.

To Governor of Nevada, Carson City, Nevada:

Has land mentioned in dispatch of Com's'r of eleventh instant been sold and deeded, or either? If so, to whom? Unless the list can be returned and corrected, I desire to have proceedings commenced immediately to set aside the certification.

H. M. TELLER, *Sec'y.*

PL'FF'S EX. NO. 5. T. J. Edwards, Com'r.

Telegram.

(Printed heading omitted.—Clerk.)

Received at Carson Dec. 14, 4.46 p. m.
Dated Washington, Dec. 14, 1883.

To Gov. Jewett W. Adams or W. M. Garrard:

Have deed for my State land claim executed immediately. Give Harry Day money if he has not got it; will remit from Hot Creek. Don't delay. Answer.

JOS. T. WILLIAMS.

559 PL'FF'S EX. NO. 6. T. J. Edwards, Com'r.

Form No. 2.

The Western Union Telegraph Company.

All messages taken by this company are subject to the following terms:

To guard against mistakes or delays the sender of a message should order it repeated—that is, telegraphed back to the originating office

for comparison. For this, one-half the regular rate is charged in addition. It is agreed between the sender of the following message and this company that said company shall not be liable for mistakes or delays in the transmission or delivery or for non-delivery of any unrepeated message, whether happening by negligence of its servants or otherwise, beyond the amount received for sending the same, nor for mistakes or delays in the transmission or delivery or for non-delivery of any repeated message beyond fifty times the sum received for sending the same, unless specially insured, nor in any case for delays arising from unavoidable interruption in the working of its lines or for errors in cipher or obscure messages; and this company is hereby made the agent of the sender, without liability, to forward any message over the lines of any other company when necessary to reach its destination.

Correctness in the transmission of message to any point on the lines of this company can be insured by contract in writing, stating agreed amount of risk and payment of premium thereon, at the following rates, in addition to the usual charge for repeated messages, viz., one per cent. for any distance not exceeding 1,000 miles and two per cent. for any greater distance. No employee of this company is authorized to vary the foregoing.

No responsibility regarding messages attaches to this company until the same are presented and accepted at one of its transmitting offices, and if a message is sent to such office by one of the company's messengers he acts for that purpose as the agent of the sender.

Messages will be delivered free within the established free-delivery limits of the terminal office. For delivery at a greater distance a special charge will be made to cover the cost of such delivery.

The company will not be liable for damages in any case where the claim is not presented in writing within sixty days after sending the message.

NORVIN GREEN, *President.*

THOS. T. ECKERT,
General Manager.

Receiver's No.	Time filed.	Check.

Send the following message subject to the above terms, which are hereby agreed to:

CARSON, NEV., *Dec.* 15, 1883.

To H. M. Teller, Washington, D. C.:

The land referred to is applied for and contracted to J. T. Williams, but no patent is yet issued.

J. W. ADAMS, *Governor.*

Read the notice and agreement at the top.

PL'FFS EX. No. 7. T. J. Edwards, Com'r.

Form No. 2.

The Western Union Telegraph Company.

All messages taken by this company are subject to the following terms:

To guard against mistakes or delays the sender of a message should order it repeated—that is, telegraphed back to the originating office for comparison. For this, one-half the regular rate is charged in addition. It is agreed between the sender of the following message and this company that said company shall not be liable for mistakes or delays in the transmission or delivery or for non-delivery of any unrepeated message, whether happening by negligence of its servants or otherwise, beyond the amount received for sending the same, nor for mistakes or delays in the transmission or delivery or for non-delivery of any repeated message beyond fifty times the sum received for sending the same, unless specially insured, nor in any case for delays arising from unavoidable interruption in the working of its lines or for errors in cipher or obscure messages; and this company is hereby made the agent of the sender, without liability, to forward any message over the lines of any other company when necessary to reach its destination.

Correctness in the transmission of message to any point on the lines of this company can be insured by contract in writing, stating agreed amount of risk and payment of premium thereon, at the following rates, in addition to the usual charge for repeated messages, viz., one per cent. for any distance not exceeding 1,000 miles and two per cent. for any greater distance. No employee of the company is authorized to vary the foregoing.

No responsibility regarding messages attaches to this company until the same are presented and accepted at one of its transmitting offices, and if a message is sent to such office by one of the company's messengers he acts for that purpose as the agent of the sender.

Messages will be delivered free within the established free-delivery limits of the terminal office. For delivery at a greater distance a special charge will be made to cover the cost of such delivery.

The company will not be liable for damages in any case where the claim is not presented in writing within sixty days after sending the message.

NORVIN GREEN, *President.*

THOS. T. ECKERT,
General Manager.

Receiver's No.	Time filed.	Check.

Send the following message subject to the above terms, which are hereby agreed to:

CARSON, *Dec.* 15, 1883.

To J. T. Williams, Washington, D. C.:

Secretary Teller telegraphs me that he will commence legal proceedings immediately to set aside the certificate on clear list.

J. W. ADAMS.

Read the notice and agreement at the top.

560 PL'FF'S EX. No. 8. T. J. Edwards, Com'r.

CARSON CITY, NEVADA, *Dec.* 16, 1883.

H. M. Teller, Washington, D. C.:

Enquiry at land office, Eureka district, discloses the fact that no adverse claim has been filed on land described in your dis-
561 patch of 13th instant. Why do you wish the list returned? Have you not made error in describing land?

J. W. ADAMS, *Gov.*

Further testifying, the witness says that in the years 1883 and 1884 Geo. W. Merrill was the authorized land agent for the State of Nevada at Washington, D. C., and that the following letter, concerning the lands in controversy, was received from said Merrill about January 6th, 1884.

Said letter was then offered in evidence and marked Pl'ff's Ex. No. 9, the defendant's solicitor objecting because irrelevant, incompetent, and immaterial.

PL'FF'S EX. No. 9. T. J. Edwards, Com'r.

Office of Geo. W. Merrill, attorney-at-law and land agent for the State of Nevada; practices in all of the courts; will attend to all business before U. S. General Land Office. Patents obtained for mineral, agricultural, and all classes of public lands. Claims of soldiers and sailors attended to. Patents of inventions
562 procured, and all cases before the Patent Office attended to promptly.

WASHINGTON, D. C., *Dec.* 31, 1883.

DEAR GOVERNOR: Your communication to Secretary Teller, a copy of which was forwarded me per Major Garrard, was received at the Department Saturday. I presume Preble has shown you the proposition I sent him to be considered by all as to its propriety, &c. The particular piece of land in controversy and embraced in the list in dispute was marked in pencil to be excluded from the approved list forwarded to Preble, but by some mistake, oversight, or intentional erasure on the part of some one the tract was included in the approved list.

The cause of the intended exclusion was the fact that the New Phila. Co. claimed it, and an appeal was pending before the Com-

missioner here, and of course it should not have been listed to the State until the pending controversy had been decided.

The State, however, on the merits before the Commissioner, *are* doubtless first in time and first in right and ought eventually
563 to receive the piece of land, even though you should think proper to place the particular tract back where it was at the time it was approved to the State. However, the mistake is not one made by the State or any of its agents. I am endeavoring to arrange the matter between the parties directly interested, so that the State & G. L. O. can avoid any further controversy about the matter and concerning which I will know more definitely by the middle of the week, as I wrote Preble, when I will write again.

Mrs. M. joins in wishing the Gov. & wife "a happy New Year," as well as Major Garrard & family.

Truly your friend, GEO. W. MERRILL.

The superscription and postmarks on the envelope containing said letter are as follows, to wit:

Superscription—Gov. J. W. Adams, Carson City, Nevada.
Postmark—Washington, D. C., Dec. 31, 6.30 p. m., 1883.
Postmark on opposite side—Carson City, Nev., Jan 6.

The witness, further testifying, says that on July 3d, 1884,
564 I directed my private secretary, Wm. Garrard, to address the following letter, concerning the lands in controversy, to Hon. H. M. Teller, Secretary of the Interior, at Washington, D. C.

Said letter was here offered in evidence without objection, marked Pl'ff's Ex. No. 10, and is as follows:

PL'FF'S EX. No. 10. T. J. Edwards, Com'r.

JULY 3D, 1884.

Hon. H. M. Teller, Secretary of the Interior, Washington, D. C.

SIR: I am instructed by Gov. Adams to lay before you the following information: J. T. Williams has complied with all the conditions required by the laws of this State for the purchase of the E. ½ of the S. E. ¼ sec. 23 and the W. ½ of the S. W. ¼ of sec. 34, T. 8 N., R. 50 E., Mt. D. M., except the final payment, which he is ready to make and demand his patent.

For six months Governor Adams has refused to sign the patent for this land, as requested by the Interior Department, expecting some action to be taken in the U. S. courts to determine the
565 rights of parties claiming the same, but, as he learns from the U. S. dist. attorney for this district that no steps have been taken to bring the case before the courts, he now desires to be informed if you have abandoned all legal proceedings in the case and if there is any objection to having this land patented to the applicant, J. T. Williams.

Respectfully, WILLIAM GARRARD,
Private Secretary.

Further testifying the witness says: This is all the correspondence had in my office concerning the lands in controversy herein.

J. W. ADAMS.

Signed in my presence by the said J. W. Adams this 18th of Jan'y, 1886.

T. J. EDWARDS,
Com'r U. S. Circuit Court, Dist. Nevada.

The further taking of testimony in this cause was continued until February 5th, 1886, 11 o'clock a. m.

T. J. EDWARDS,
Commissioner.

566 *Complainant's Testimony (Nevada).*

In United States Circuit Court, 9th Circuit & District of Nevada.

THE UNITED STATES, Complainant,
v.
JOSEPH T. WILLIAMS, Defendant.

Testimony on behalf of complainant, taken at Carson City, Nevada, Feb'y 5th, 1886, before U. S. Commissioner Edwards, pursuant to stipulation and order on file in said cause, T. Coffin, U. S. attorney, and J. D. Torreyson, Esquires, appearing for complainant; T. W. Healy, Esq., defendant's solicitor, appearing and representing the defendant.

RICHARD GLUYAS, a witness introduced by the complainant, being first duly sworn, on oath deposes and says:

I reside at Hot Creek, Nye county, Nevada; am agent for Matthiesson & Ward, of New York city and Jersey City. I am well acquainted with the lands described in the bill of complaint; have known them since about Aug. 5th, 1879; have lived within about half a mile of the land since that time. In August, 1879, I
567 went on the land to superintend the building of a quartz mill for the New Philadelphia Mining Company, J. E. Clayton being manager of the company at that time. A day or two after I got to Hot Creek, in company with said Clayton, one W. H. Davis, and Jos. T. Williams, the defendant herein, I went on to the land described in bill of complaint and picked out a place for a quartz mill. Since that time I had the county surveyor to identify the land; hence I know that is the land in controversy. We commenced about the eleventh of August to grade for the mill and continued working until the following May or June, in the meantime nearly completing the mill—a ten-stamp quartz mill. The total expenditures in building the mill are nearly fifty-eight thousand dollars; have known defendant Williams since August, 1879. He lives about one-third of mile from the mill. He was there frequently during the time of building the mill, the men, nearly all of them—about 14 or 15—boarding at his house. We took possession of the

land in August, 1879, as I understood, under a deed from
568 Williams, defendant, to the New Phila. Silver Mining Company. I have since seen the record of this deed in the county recorder's office at Belmont, and also a certified copy of the original deed. The true consideration thereof paid in money was five thousand dollars.

(Defendant's solicitor objects to the testimony concerning the consideration named in the deed.)

Complainant asks leave to offer in evidence a certified copy of this deed at such future day as the taking of this testimony may be adjourned to and as soon as such copy can be procured from the the county recorder of Nye county.

Witness, further testifying, says:

From August 5, 1879, to some time in the fall or winter of that year Prof. J. E. Clayton was in possession of this land as the agent of the Phila. Min'g Company, and I was present on the land acting under him in the construction of the quartz mill, and since the fall or winter of 1879 I have been in the continuous possession thereof as the agent of said mining company and its succes-
569 sors or assignees. I know that defendant Williams made a desert-land entry of the lands in suit; have seen the entry in the U. S. land office at Eureka, Nevada, and often heard Williams say he had made such entry. It was an open, notorious fact that Williams had made the desert-land entry.

By Mr. TORREYSON:

Q. Did Mr. Williams, defendant, agree with you, and, if so, when, to relinquish this desert-land entry in favor of the parties whom you represented?

A. He did after Matthiesson & Ward had paid all the debts of the New Phila. S. M. Co. in full and purchased all the property of said company in the State of Nevada at sheriff's sale. This agreement was made about March, 1882, and the relinquishment was to be in favor of Mess. Matthiesson & Ward.

Q. Did he relinquish the desert-land entry; and, if so, how was it done?

A. He did; but not in favor of Matthiesson & Ward, but secretly and with the assistance of the register of the U. S. land office. Mr. Hinckley kept Matthiesson & Ward and their agents entirely in the dark. I wrote to said Hinckley in a few weeks after
570 the date of that relinquishment, asking him if such had been done—if any changes had occurred in the status of the land. Hinckley replied that Mr. Williams had told him that he thought he would relinquish that desert-land entry. The date of Hinckley's letter was several weeks later than the records in the office show the actual relinquishment of the desert-land entry by Williams; and I also found out from Hinckley afterwards that Lawyer Bishop, of Eureka, held an application made by Williams to purchase this land from the State as soon as the relinquishment of the desert-land entry

was accepted and approved by the Commissioner of the General Land Office, in Washington.

(Defendant's solicitor objects to all the testimony regarding the letter of Hinckley because it is not the best evidence, and all the testimony relating to purported action in the premises of Lawyer Bishop as incompetent, irrelevant, and immaterial.)

Witness further says: I have not the letter received by me from Hinckley in my possession. I know of Mr. Williams applying to the State to purchase this same land in suit from hearing
571 him say so, seeing the record, and hearing Mr. Preble so state.

Cross-examination:

The New Phila. Co. was incorporated in New York city under the laws of that State, as I understand it. It went out of existence in 1881. Its property was sold at sheriff's sale to Matthiesson & Ward. The New Phila. Co. never, to my knowledge, made any assignment of any contract directly to Matthiesson & Ward. I never knew of any contract between the company and Williams to be assigned. Matthiesson & Ward were stockholders—not officers—in the New Phila. Co.

By Mr. HEALY:

Q. Have you been continuously in possession of the land described in complaint since July 26, 1879?

A. I have; since August 5th, 1879, or thereabouts.

Q. In what capacity were you connected with the New Phila. Co.?

A. As mill superintendent until January, 1880, when I was appointed ass't superintendent by the Co., which position I held until the first of February, 1881.

572 Q. Did not Williams, the defendant, continuously live upon the land and have possession of it, and does he not live there yet and have his house upon the land?

A. No, sir; Williams' dwelling is on the S. E. ¼ of the N. E. ¼ of sec. 33.

Q. Did not Williams construct some ditches on the land in controversy?

A. Never, to my knowledge; certainly never since I have known the land. There were no ditches on the land when I went there that I saw. It is possible that a small portion of the ditch purchased by Matthiesson & Ward from M. J. Franklin and M. N. Donahue, Franklin's agent, crossed the corner of the northerly boundary of the land in controversy.

Q. Did Williams ever deliver possession of the land in controversy to Matthiesson & Ward or make any agreement regarding a conveyance of the same?

A. He never delivered possession to Matthiesson & Ward or their agents, but he agreed in March, 1882, to relinquish his desert-land entry in favor of Matthiessen & Ward, as already testified to.

573 Q. Do you know of any agreement or contract made and entered into by the defendant Williams and the New Phila. Co. regarding the sale of mineral lands?

A. Williams never made any contract with the New Phila. Co., nor was he to receive any stock from the sale of mineral lands or mining claims by Williams to the company. I know of nothing between Williams and the company except the deed of July 26, 1879.

By Mr. HEALY:

Q. Did Williams relinquish the desert-land entry before named, and did Matthiessen & Ward protest against said relinquishment of said entry?

A. He did; and Matthiessen & Ward protested against it at Washington; but, being kept in ignorance of the relinquishment, filed their protest after the desert-land entry was cancelled at Washington, and petitioned to have the desert-land entry reinstated, which petition to reinstate was denied.

Redirect examination by Mr. COFFIN:

574 I went upon the land, in employ of New Phila. Co., about August 5, 1879, and remained there in their employ and as their agent until February 1st, 1881. On February 1st, 1881, Matthiessen & Ward appointed me their agent. The property was all conveyed to Matthiessen & Ward by sheriff's deed. The sheriff's deeds were given as the result of suits brought prior to Feb'y 1, 1881, and ever since Feb'y 1, 1881, I have held possession of the land in suit for Matthiessen & Ward. My possession of said land, first as agent of the New Phila. Co. and afterwards as the agent of Matthiessen & Ward, has been unbroken and continuous from about August 5th, 1879, to the present time. Matthiessen & Ward never recognized Williams as having any right to the land in controversy, but held possession under the sheriff's deed.

Witness is here shown a map, and he testifies that it is substantially a correct map of the land and improvements thereon. The same was offered and admitted in evidence, subject to objec-
575 tion of def't's solicitor for the reason that the map is incorrect. Said map is marked Exhibit A.

Recross-examination by Mr. HEALY:

Q. Did the New Phila. Co. erect a quartz mill and construct the ditches on said land?

A. They did, except the ditch purchased from Franklin and Donahue, as before stated. I cannot state the price paid for this ditch, as it was included in the conveyances from Franklin & Donahue to Matthiessen & Ward of all their water rights, ditches, and lands in Hot Creek cañon, for all of which they paid about thirteen hundred dollars.

Q. How much money did the New Phila. Co. owe Matthiessen?

A. Six thousand dollars, I believe, for cash loaned. Matthiessen

& Ward paid for said property at sheriff's sales, in addition to the above-mentioned $6,000, about $13,000.00 in cash, and also purchased said company's property from receiver in New York.

576 Q. Did Williams use the water flowing through said land or exercise any acts of ownership over said lands since August, 1879?

A. He has never used any water on said lands since I went to Hot Creek, in 1879. What water has been used on the land since that date was used by the New Phila. Co. through a ditch I cut, as their agent. He has never exercised any acts of ownership over the lands or made fifty cents' worth of improvements there since I have been at Hot Creek.

Q. Did Matthiessen & Ward or the New Phila. Co. ever use any water through their ditches unless with the consent of defendant Williams?

A. Yes, sir.

Q. Does not the water flow through the land of Williams—his homestead—before it goes into the ditches, and does he not use it first?

A. Yes, sir, to the whole question.

Q. How long has he used this water on the land known as his homestead?

577 (Objected to by counsel for plaintiff as not being in cross-examination and as irrelevant and immaterial in the case; no water rights are being tried herein.)

A. Every season since 1879, to my knowledge.

2d redirect by Mr. COFFIN:

Quest. Has Williams' use of this water been adverse to the New Phila. M'g Co. and to Matthiessen & Ward or by their license and permission and license and permission of their predecessors in interest?

Ans. It has not been adverse; its use has been in accordance with deeds and agreements existing. The water comes from a point in Hot Creek cañon above the homestead entry of Williams and flows over the land embraced in the said homestead entry before reaching the land described in the bill of complaint.

RICHARD GLUYAS.

Signed by said witness in my presence this 5th day of February, A. D. 1886.

T. J. EDWARDS,
Com'r U. S. Circuit Court, 9th Cir. & Dist. Nevada.

(Here follows diagram marked p. 578.)

579 The further taking of testimony was postponed until the 6th day of Feb'y, 1886, 10 o'clock a. m.

T. J. EDWARDS, *Com'r.*

580 CARSON, *Feb'y 6th*, 1886.

Present: Messrs. Coffin & Torreyson, sol'rs for complainant; T. W. Healey, Esq., sol. for def't.

C. S. PREBLE, a witness produced by complainant, being first duly sworn, on oath says:

I am the surveyor general and *ex officio* State land register of the State of Nevada, and have been such officer since the first Monday in January, A. D. 1883.

(Witness here produced and identified several letters and telegrams, and testified as follows:)

These letters and telegrams are all of the correspondence had in my office concerning the land in suit.

The letters and telegrams were then offered in evidence and marked Exhibits B, C, D, E, F, G, H, I, J, K.

(Defendant's solicitor objects to the introduction of Exhibits E & F because they purport to order the surveyor general of the State to perform an official act, no authority being invested in Mr.
581 Merrill for that purpose. Exhibits I, J, & K are also objected to for the reason that they purport to arrange for the divesting of the title to land without the consent of the parties interested therein and without the intervention of a court of equity.)

PL'FF'S EX. B. T. J. Edwards, Com'r.

Form No. 2.

The Western Union Telegraph Company.

All messages taken by this company are subject to the following terms:

To guard against mistakes or delays the sender of a message should order it repeated—that is, telegraphed back to the originating office for comparison. For this, one-half the regular rate is charged in addition. It is agreed between the sender of the following message and this company that said company shall not be liable for mistakes or delays in the transmission or delivery or for non-delivery of any unrepeated message, whether happening by negligence of its servants or otherwise, beyond the amount received for sending the same, nor for mistakes or delays in the transmission or delivery or for non-delivery of any repeated message beyond fifty times the sum received for sending the same, unless specially insured, nor in any case for delays arising from unavoidable interruption in the working of its lines or for errors in cipher or obscure messages; and this company is hereby made the agent of the sender, without liability, to forward any message over the lines of any other company when necessary to reach its destination.

Correctness in the transmission of message to any point on the lines of this company can be insured by contract in writing, stating

agreed amount of risk and payment of premium thereon, at the following rates, in addition to the usual charge for repeated messages, viz., one per cent. for any distance not exceeding 1,000 miles and two per cent. for any greater distance. No employee of this company is authorized to vary the foregoing.

No responsibility regarding messages attaches to this company until the same are presented and accepted at one of its transmitting offices, and if a message is sent to such office by one of the company's messengers he acts for that purpose as the agent of the sender.

Messages will be delivered free within the established free-delivery limits of the terminal office. For delivery at a greater distance a special charge will be made to cover the cost of such delivery.

The company will not be liable for damages in any case where the claim is not presented in writing within sixty days after sending the message.

NORVIN GREEN, *President.*

THOS. T. ECKERT,
General Manager.

Receiver's No.	Time filed.	Check.

Send the following message subject to the above terms, which are hereby agreed to:

CARSON, *Dec.* 15, 1883.

To F. H. Hinckley, Eureka, Nev.:

What adverse claim is there now or has there been to west half of southwest of thirty-four and east half of southeast thirty-three, T. eight N., R. fifty E., selection allowed on two M forty-nine?

C. J. PREBLE.

Read the notice and agreement at the top.

582 PL'FF'S EX. C. T. J. Edwards, Com'r.

Telegram.

(Printed heading omitted.—Clerk.)

Received at Carson Dec. 15th, 5.40 p. m.
Dated Eureka, Dec. 15, 1883.

To C. S. Preble:

No adverse claim filed here yet, but am expecting one.

F. H. HINCKLEY.

PL'FF'S EX. D. T. J. Edwards, Com'r.

Telegram.

(Printed heading omitted.—Clerk.)

Received at Carson Dec. 15th, 3.08 p. m.
Dated Washington, D. C., —— 15th, 1883.

To C. S. Preble, register State land office, Carson, Nev.:

Tract inadvertently certified while adverse claim was pending and undecided. Much embarrassment will result to Department if list be not returned as requested.

H. M. TELLER, *Sec'y.*

COMPLAINANT'S EX. E. T. J. Edwards, Com'r.

Telegram.

(Printed heading omitted.—Clerk.)

Received at Carson Dec. 18, 3.01 —.
Dated Washington, Dec. 18, 1883.

To C. S. Preble, surveyor general:

583 Hold list for present; am arranging with Dep't; will telegraph to-morrow.

G. W. MERRILL.

COMPLAINANT'S EX. F. T. J. Edwards, Com'r.

Telegram.

(Printed heading omitted.—Clerk.)

Received at Carson Dec. 19th, 2.20 —.
Dated Washington, D. C., —— 19, 1883.

To C. S. Preble, surveyor general:

Hold list. Wait my letter of this date.

GEO. W. MERRILL.

PL'FF'S EX. G. T. J. Edwards, Comm'r.

Telegram.

(Printed heading omitted.—Clerk.)

Received at Carson Dec. 17, 3. B.
Dated Reno, Nev., —— 17, 1883.

To C. S. Preble:

New Philadelphia mill site, southeast quarter of southeast quarter section thirty-three and southwest quarter of southwest quarter

agreed amount of risk and payment of premium thereon, at the following rates, in addition to the usual charge for repeated messages, viz., one per cent. for any distance not exceeding 1,000 miles and two per cent. for any greater distance. No employee of this company is authorized to vary the foregoing.

No responsibility regarding messages attaches to this company until the same are presented and accepted at one of its transmitting offices, and if a message is sent to such office by one of the company's messengers he acts for that purpose as the agent of the sender.

Messages will be delivered free within the established free-delivery limits of the terminal office. For delivery at a greater distance a special charge will be made to cover the cost of such delivery.

The company will not be liable for damages in any case where the claim is not presented in writing within sixty days after sending the message.

NORVIN GREEN, *President.*

THOS. T. ECKERT,
General Manager.

Receiver's No.	Time filed.	Check.

Send the following message subject to the above terms, which are hereby agreed to:

CARSON, *Dec.* 15, 1883.

To F. H. Hinckley, Eureka, Nev.:

What adverse claim is there now or has there been to west half of southwest of thirty-four and east half of southeast thirty-three, T. eight N., R. fifty E., selection allowed on two M forty-nine?

C. J. PREBLE.

Read the notice and agreement at the top.

582 PL'FF'S EX. C. T. J. Edwards, Com'r.

Telegram.

(Printed heading omitted.—Clerk.)

Received at Carson Dec. 15th, 5.40 p. m.
Dated Eureka, Dec. 15, 1883.

To C. S. Preble:

No adverse claim filed here yet, but am expecting one.

F. H. HINCKLEY.

PL'FF'S EX. D. T. J. Edwards, Com'r.

Telegram.

(Printed heading omitted.—Clerk.)

Received at Carson Dec. 15th, 3.08 p. m.
Dated Washington, D. C., —— 15th, 1883.

To C. S. Preble, register State land office, Carson, Nev.:

Tract inadvertently certified while adverse claim was pending and undecided. Much embarrassment will result to Department if list be not returned as requested.

H. M. TELLER, *Sec'y.*

COMPLAINANT'S EX. E. T. J. Edwards, Com'r.

Telegram.

(Printed heading omitted.—Clerk.)

Received at Carson Dec. 18, 3.01 —.
Dated Washington, Dec. 18, 1883.

To C. S. Preble, surveyor general:

583 Hold list for present; am arranging with Dep't; will telegraph to-morrow.

G. W. MERRILL.

COMPLAINANT'S EX. F. T. J. Edwards, Com'r.

Telegram.

(Printed heading omitted.—Clerk.)

Received at Carson Dec. 19th, 2.20 —.
Dated Washington, D. C., —— 19, 1883.

To C. S. Preble, surveyor general:

Hold list. Wait my letter of this date.

GEO. W. MERRILL.

PL'FF'S EX. G. T. J. Edwards, Comm'r.

Telegram.

(Printed heading omitted.—Clerk.)

Received at Carson Dec. 17, 3. B.
Dated Reno, Nev., —— 17, 1883.

To C. S. Preble:

New Philadelphia mill site, southeast quarter of southeast quarter section thirty-three and southwest quarter of southwest quarter

of section thirty-four, township eight north, range fifty east, approved December twenty-sixth, eighteen eighty-two. Send you sketch.

JAMES BUTLER.

584 COMPLAINANT'S EX. I. T. J. Edwards, Com'r.

WASHINGTON, D. C., *Dec.* 19, 1883.

Hon. C. S. Preble, Carson City.

FRIEND PREBLE: Yours of the 6th & 11th, also the registered package, at hand to-night. The trouble about the list No. 2, Eureka, is just this: In that list was a piece of land applied for at the Eureka land office by Ward, Mathison, & others as a mill site, and the application was rejected by the Eureka office for the reason that the same had been previously selected by the State, and from that decision of the Eureka land office Ward *et al.* appealed, and, among other things, are attacking the validity of the State selection, &c. That appeal is still pending and undetermined before the Commissioner of the General Land Office.

The particular piece of land about which the controversy exists was, it seems, marked in pencil on the margin of the Eureka list, a memoranda to exclude it from the clear list, which was forwarded you, but by some inadvertence, mistake, or something
585 or somehow (no one seems to know) the pencil mark or memoranda became obliterated and the piece of land in controversy went into the clear list and was approved with the balance; so the Land Office here wanted back the whole list, and as soon as I learned the facts I concluded at once that, so far as the State was concerned, the approval of the list was just, right, and proper, and that it would not be proper or right to return the whole list for cancellation and perhaps jeopardize the title and interests of the State and even grantees of the State, perhaps, to the greater portion of the land embraced in the list and over which there was no controversy. Therefore I had an interview with the Commissioner of the G. L. O. and with the Secretary of the Interior and urged upon them the reasons why it was unjust to the State (which was no party to any inadvertence of their clerks) for them to ask its return; and, further, that it was utterly impossible to think of doing so. Finally, to show them the State only wanted to do the fair thing and take no advantage of their mistakes, I told them I would submit this proposition to you and the
586 Governor, which, if approved, would settle our controversy, viz: Let the Governor and the proper officers of the State relinquish the present title acquired by virtue of Eureka clear list No. 2 to the particular piece of land in controversy for the present or until the G. L. O. had determined the case on appeal, when, if the decision was against appellants in the case of Ward *et al.*, then the particular piece relinquished for the time being should be included in the next approved list after the decision was rendered—in other words, the State to place the particular piece of land in the status it occupied at the time the Eureka clear list No. 2 of May 5th was

approved and allow the approved list to stand (with that exception) and remain where it is; this to be done by a written instrument, signed and acknowledged by the proper State officers, with a proviso that the State still claims the land, subject to the decision of the Land Office, and only places it back where it was for the purpose of correcting a mistake, &c. I think you will get my idea. This proposition the Comm'r & Secretary conceded to be a fair
587 one, and finally it was agreed that "hostilities should cease" until you and the Governor could be heard from. I doubt very much their ability to set the approval aside by any process in court, but still, after consultation with Williams' att'y here and considering his interests, as well as keeping things smooth with the State, and to show that the State and its representatives wanted to be fair and just in all things, I submitted the foregoing proposition, subject, of course, to approval at Carson. Consider it well and see what you think about it and let me know. Since the foregoing was written Williams' att'y has been to see me and informs me there is an arrangement on hand between the att'ys on both sides which may obviate any action being taken on your part. If successful I will inform you to-morrow or next day by letter. So you can discuss my proposition until you hear from me again. Let everything remain "*in statu quo*" until you get another letter from me. Williams was here for a few days, but left for home on the 15th. Of
588 course, he is the party interested in the matter as against Ward *et al.* It seems to me the State must succeed in obtaining the land.

* * * * * * *

Yours truly, GEO. W. MERRILL.

COMPLAINANT'S EXHIBIT J. T. J. Edwards, Com'r.

WASHINGTON, D. C., *Jan'y 13th*, 1884.

Hon. C. S. Preble, Carson City, Neva.

FRIEND PREBLE: * * * Now, as to the matter of the proposition I submitted to you concerning the land "inadvertently" included in approved list No. 2, Eureka, I think it about as well for you and the Governor to give me a formal reply, as it seems hardly worth while to wait longer for the att'ys or the parties here to come to a conclusion on settlement, and have been hoping they would from day to day. I suppose, really, the letter of the Governor to Teller virtually decides the matter on the part of the State, but as I was in communication with the Department here concerning a settlement, and they agree to delay action until I could sub-
589 mit a proposition to the authorities in Carson to deed that particular piece and await the decision of the Land Office in its regular course, I wish you would submit the whole matter to the Gov. and have him (I presume it would properly com- from him) send me a reply to the proposition, so that I can communicate it to the Department. Have the reply addressed to me and not the Department for certain reasons. It is possible the matter may be

arranged before a reply to this reaches me, but, then, it will do no harm to have your reply here, and I presume you have all consulted about the matter and are as "ready to fire" now as any time. * * *

Very truly yours, GEO. W. MERRILL.

COMPLAINANT'S EXHIBIT K. T. J. Edwards, Com'r.

WASHINGTON, D. C., *Jan'y 28th*, 1884.

FRIEND PREBLE: * * * I have not received any reply as yet to the proposition to deed back the mill site in controversy approved in Eureka list No. 2. I am aware many intricate propositions of law are involved in the proposition as to vested rights of third parties or persons having made contracts for purchase from the State. In fact, officers here perceive the difficulty which might arise.

590

However, look into the matter carefully, as I doubt not you have or will, and when yourself, the Governor, and Attorney General have come to a conclusion let me have a reply. There seems to be no prospect of a compromise between the interested parties here. I understand the Land Office here is preparing papers for suit to set aside the approval. It may be that a suit will be the only legitimate way to settle the matter and preserve the liability of the State intact. However, I hope to receive your reply soon.

Yours, &c., G. W. MERRILL.

COMPLAINANT'S EX. H. T. J. E., Com'r.

U. S. SURVEYOR GENERAL'S OFFICE, NEVADA,
RENO, *December* 18, 1883.

Hon. C. S. Preble, Carson.

DEAR SIR: In reply to your letter would say that application was made by F. O. Matthiessen *et al.* for the survey of the New Philadelphia mill site, situated in secs. 33 & 34, T. 8 N., R. 50 E., as follows:

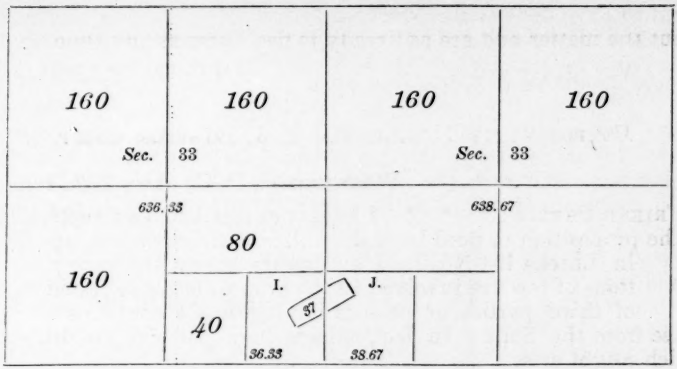
591

Application dated December 9th, 1882.
" filed in U. S. sur. gen'l's office Dec. 13, 1882.
Survey made by George Earnst " 16, "
Survey approved by E. S. Davis " 26, "
and forwarded to Eureka land office " " "

This office has not been notified of the issuance of patent for the mill site & I presume in taking up the mill site for examination they found the land had been disposed of to the State of Nevada. There was no application prior to Dec. 13th for survey.

Yours truly JAMES BUTLER.

T. 8 N., R. 50 E.



37, New Philadelphia Mill Site.

592 The witness, further testifying, says:

By Mr. COFFIN:

Quest. In what relation did Geo. W. Merrill, who wrote and signed the letters offered in evidence, stand to the State of Nevada?

Ans. He was the authorized land agent of the State of Nevada in Washington, appointed by the Governor to attend to all land matters in the Department of the Interior.

Q. In the telegram, Ex. D, Sec't'y Teller makes reference to a request for the return of a list to him. What list did he refer to and how was the request made?

A. The request was made in a telegram to the Governor from the Secretary, and the list referred to was approved list No. 2 of the 2-million-acre grant, Eureka district, embracing the land described in the bill of complaint and contained in U. S. land office clear list No. 24.

Q. Why was not this list returned as requested by Secretary Teller?

A. Because we knew of no reason why it should be.

Q. Why was not list No. 2, embracing clear list No. 24, re-
593 turned after the receipt of telegram, Ex. D, from Sec'y Teller, stating "much embarrassment will result if list be not returned as requested?"

A. Because I did not consider that a telegram was sufficient grounds to return the list on.

Q. Why was not list No. 2, embracing clear list No. 24, returned to the Gen'l Land Office at Washington after the receipt of the letters of Geo. W. Merrill, of date Dec. 19, 1883, Jan'y 13, 1884, and Jan'y 28, 1884, advising and requesting the return of said list?

A. Because I don't think he advised or requested the return of the list, but merely suggested the plan of deeding the land back to the Government or relinquishing the title. That could not have

been done, as Mr. Williams, def't, had already been notified to make contract or take out patent.

Q. Had Williams, def't, at the time of receipt of these telegrams and letters, made any contract or taken any patent or paid any money for the lands in controversy?

A. Mr. Williams made application for the land in con-
594 troversy May 22, 1882, and paid at that time the sum of forty dollars as first payment and two dollars U. S. land office fees, and was notified to make contract on the 26th day of November, 1883, but had not returned the papers before these telegrams were received.

Q. At the date of receipt of these letters and telegrams had defendant Williams entered into any contract with the State for the purchase of the land in controversy or had any patent therefor been issued by the State?

A. No; but he had been notified to enter into contract or to take out his patent.

I have the original application of Williams to purchase this land, which I here now produce, dated at Eureka, Nevada, May 20, 1882.

The original application was offered and admitted in evidence without objection and marked Exhibit L, and is as follows:

595 COMPLAINANT'S EX. L. T. J. Edwards, Com'r.

EUREKA, NEVADA, *May 20th*, 1882.

To Hon. A. J. Hatch, register of the land office:

I, Joseph T. Williams, of Nye county, State of Nevada, being of lawful age, do hereby apply, under the provisions of section 9 of an act entitled "An act to provide for the selection and sale of lands that have been or may hereafter be granted by the United States to the State of Nevada," approved March 5, 1873, and the acts amendatory thereof and supplemental thereto, to purchase the following-described land in Nye county:

Description.	Section.	Township.		Range.
		North.	South.	East.
E. ½ of S. W. ¼	33	8		50
W. ½ of S. W. ¼	34	8		50

Mount Diablo meridian, containing 160 acres, according to the returns of the United States surveyor general, for which I agree to pay the State of Nevada at the rate of one dollar and twenty-five cents ($1.25) in United States currency per acre.

Residence, Hot Creek, Nye county, Nevada.
Post-office address, Hot Creek, Nye county, Nevada.
Sign name in full. J. T. WILLIAMS,
By —— ——, *Agent.*

First payment, $40.
U. S. Land Office fees, $—.

596 [Endorsed:] Pl'ff's Exhibit L. Contract No. 2122. 2 M 2. Application No. 4731. — acres. J. T. Williams. Payment, $—. Filed May 22d, 1882, at 2.30 o'clock p. m. A. J. Hatch, land register, by I. N. Fassett, deputy.

597 Witness further testifies: I have here the original contract entered into between Williams and the State for the purchase of the lands in controversy, dated February 2d, 1884.

Which contract was offered and admitted in evidence without objection, marked Exhibit M, and is as follows:

598 & 599 COMPLAINANT'S EX. M. T. J. Edwards, Com'r.

This article of agreement, made and entered into this second day of February, 1884, by and between the State of Nevada, acting through C. S. Preble, surveyor general and *ex officio* register of the State land office of said State, party of the first part, and J. T. Williams, of the county of Nye, in the State of Nevada, party of the second part, witnesseth:

That the party of the first part, for and in consideration of one dollar and twenty-five cents ($1.25) per acre, in good and lawful money of the United States, to be paid, as hereinafter expressed, by the party of the second part, doth agree to convey by good and sufficient patent in fee simple to the party of the second part the following-described lands, to wit:

Description.	Section.	Township.		Range.
		North.	South.	East.
E. ½ of S. E. ¼	33	8		50
W. ½ of S. W. ¼	34	8		50

Mt. Diablo meridian, containing one hundred and sixty (160) acres. In consideration of which the party of the second part, for himself, his heirs or assigns, doth agree to pay to the State of Nevada the sum of one dollar and twenty-five cents ($1.25) per acre, as above stated, at the times and in the manner mentioned in this article, to wit: One-fifth (⅕) of the amount at the time of the making of this contract and the balance in nine (9) equal annual install-

ments, with interest at the rate of ten (10) per cent. per annum, payable annually, upon all deferred installments, as is provided in section nine (9) of an act entitled "An act to provide for the selection and sale of lands that have been or may hereafter be granted by the United States to the State of Nevada," approved March 5, 1873, and the acts amendatory thereof and supplementary thereto.

600 And it is hereby further provided and agreed that the party of the second part, his heirs or assigns, may at any time prior to the maturity of this contract make full payment for the land described in this article and receive from the State of Nevada a patent for the same, issued in the name of the applicant.

This contract is made upon the express conditions, viz., that if the said J. T. Williams, party of the second part, shall fail to pay the principal sum herein specified or the interest thereon or any part of the same according to the terms of this agreement, as is herein stipulated, then the land herein described shall immediately and unconditionally revert to the State of Nevada and be thereafter subject to sale in the manner and under the same conditions as though this contract of sale had not been made.

Witness our hands and seals this second day of February, A. D. 1884.

C. S. PREBLE, [SEAL.]
Surveyor General and ex Officio Land Register.
JOS. T. WILLIAMS,
By —— ——, *Agent.*

Witness:
A. D. ROCK.
J. C. POWELL.

NOTE.—The first payment ($40) on this contract was made May 22d, 1882, as shown by receipt No. 166. The second payment will be due one year from the date of this contract. Full payment may be made at any time.

601 Endorsed: Ex. M. Nov. 25, 1885. New contract substituted under provisions of section 9 of land laws. 2 M 2. 160 acres. Contract No. 2122. Nov. 21, '85. On application No. 4731. J. T. Williams. Payments: 1st, paid, $40.00; 2d, 1885, $33.80; 3d, 1886, $32.00; 4th, 1887, $30.25; 5th, 1888, $28.45; 6th, 1889, $26.65; 7th, 1890, $24.90; 8th, 1891, $23.10; 9th, 1892, $21.35; 10th, 1893, $19.55. Int., Nov. 25, '85, $11.55; $142.22, 36–1; 853, 88–8. February 2d. Cancelled. Substitute. (Hot Creek) Tybo P. O.

602 Witness, further testifying, says: This contract is dated Feb'y 2, 1884. The reason why the contract bears date so long after Williams was notified to make the contract is because I held the contract after it had been signed by Williams until I could get more information as to what was exactly wanted by the Department, in Washington.

Q. Did you receive any further information?
A. Nothing in particular. After I had received all these letters and

telegrams, and receiving no further information, I signed the contract in behalf of the State, contracting to sell the lands in controversy to Williams, the defendant.

Q. Had Williams any knowledge of the contents of these letters and telegrams before February, 2d, 1884, the date of the contract?

A. Not that I know of.

Q. Did def't Williams ever tell you that he, Williams, had built a $20,000.00 quartz mill upon this land in controversy, and that a mining company was trying to steal it from him, or words to that effect?

(Def't's solicitor objects to the question as immaterial, incompetent, and irrelevant.)

603 Ans. Some time after making the contract I was told by some one—I am pretty sure it was by Williams, defendant—that he had placed twenty thousand dollars of improvements upon this land, and that this thieving mining company were trying to swindle him out of it.

Q. About the time of the receipt of these letters and telegrams did any attorney or agent of def't Williams ever talk with you about the contents thereof and about the inadvertent approval of the land to the State by the authorities in Washington?

A. No, sir.

Q. At the time Williams first made application for this land, of date May 20, 1882, and filed in your office May 22, 1882, and made his first payment thereon, had the State any title whatever to the land or had the State at that time selected the land?

A. No, to both portions of the question.

Q. Did you at any time before filing the contract on February 2, 1884, notify Williams or any agent of his, by letter or otherwise, that the officers of the Government claimed that the lands in con-
604 troversy were listed to the State of Nevada inadvert-ly or by mistake?

A. I don't remember.

Q. Do you know from any source whether or not Williams knew that the Government claimed that the listing was through inadvertence or by mistake?

A. I don't know anything about that; of course not. I heard that at that time Williams himself was in Washington.

(Def't's solicitor objects to the last part of above answer as being hearsay.)

Further testifying, the witness says that defendant Williams has requested and received a substitute contract in lieu of the contract of Feb'y 2d, 1884, as provided by an act of the Legislature of the State of Nevada approved March 12, 1885, which contract I here produce.

Contract offered and introduced in evidence without objection and is marked E. N, being as follows, to wit:

605 COMPLAINANT'S EX. N. T. J. E., Com'r.

STATE OF NEVADA, *Land Department:*

This article of agreement, made and entered into this 25th day of November, 1885, by and between the State of Nevada, acting through C. S. Preble, surveyor general and *ex officio* register of the State land office of said State, party of the first part, and Joseph T. Williams, of the county of Nye, in the State of Nevada, party of the second part, witnesseth:

That the party of the first part, for and in consideration of one dollar and twenty-five cents ($1.25) per acre, in good and lawful money of the United States, payable, as hereinafter expressed, by the party of the second part, doth agree to convey to the party of the second part, by good and sufficient patent in fee simple, the following-described lands, to wit:

Description.	Section.	Township.		Range.
		North.	South.	East.
E. ½ of S. E. ¼	33	8		50
W. ½ of S. W. ¼	34	8		50

Mt. Diablo base and meridian, containing one hundred and sixty (160) acres.

605½ In consideration of which the party of the second part, for himself, his heirs or assigns, doth agree to pay the State of Nevada at the rate of one dollar and twenty-five cents ($1.25) per acre, as above stated, of which sum the party of the second part has heretofore paid the sum of thirty-six and $\frac{1}{9}$ ($36\frac{1}{9}$) cents per acre; and it is hereby further agreed that the party of the second part shall, within twenty-five (25) years from the date of this article of agreement, pay the balance of said one dollar and twenty-five cents ($1.25) per acre, viz., eighty-eight and $\frac{8}{9}$ ($88\frac{8}{9}$) cents per acre—*i. e.*, the sum of one hundred and forty-two $\frac{22}{100}$ (142.22) dollars—with interest thereon at the rate of six per centum per annum, interest payable annually, as provided in section 8 of an act entitled "An act to provide for the selection and sale of lands that have been or may hereafter be granted by the United States to the State of Nevada," approved March 12, 1885; and it is hereby further provided and agreed that the party of the second part, his heirs or as-

606 signs, may at any time prior to the maturity of this contract make full payment for the land described in this article and receive from the State of Nevada a patent for the same, issued in the name of the applicant. This contract is made upon the express

conditions, viz., that if the said Joseph T. Williams, party of the second part, shall fail to pay the principal sum herein specified or the interest thereon or any part of the same according to the terms of this agreement, as herein stipulated, then the land herein described shall immediately and unconditionally revert to the State of Nevada and be thereafter subject to sale in the manner and under the same conditions as though this contract of sale had not been made.

Witness our hands this twenty-fifth day of November, 1885.

C. S. PREBLE,
Surveyor General and ex Officio Land Register.
JOSEPH T. WILLIAMS.

Witness:
H. B. CAMPBELL.

607 Endorsed: Substitute 2 M, list No. 2. 160 acres. Contract No. 2122. On application No. 4731. State of Nevada with J. T. Williams. Interest ($8.51) due on the 25th day of November of each year. Balance of principal ($142.22) due on the 25th day of November, 1910. Payments of interest: 1st, Nov. 25th, 1886; 2d, 1887; 3d, 1888; 4th, 1889; 5th, 1890; 6th, 1891; 7th, 1892; 8th, 1893; 9th, 1894; 10th, 1895; 11th, 1896; 12th, 1897; 13th, 1898; 14th, 1899; 15th, 1900; 16th, 1901; 17th, 1902; 18th, 1903; 19th, 1904; 20th, 1905; 21st, 1906; 22d, 1907; 23d, 1908; 24th, 1909; 25th, 1910.

Q. After receiving the letters and telegrams heretofore offered in evidence did or did you not decline to accept the suggestions of Geo. W. Merrill contained in his letter of December 19, 1883, marked Ex. I?

608 A. Upon consulting the attorney general of the State we declined to accept the suggestions of Mr. Merrill.

Cross-examination — Mr. HEALY:

Question. Are you sure that defendant Williams told you that he had spent $20,000 in the erection of a quartz mill and improvements upon the land in controversy?

Ans. I cannot swear that it was Williams; but my impression is that he told me that he had placed twenty thousand dollars' worth of improvements on the place.

Q. Might — def't Williams — said there was $20,000 worth of improvements on the land, and not that he had made improvements to that amount?

A. He might have said that. He left the impression, though, that they were placed there by him.

Q. Are you sure that Williams told you that he had made $20,000 worth of improvements on the land?

A. I cannot swear that it was Williams. Some one told
609 me so, and I think it was Williams.

Q. If Merrill had advised you to send the list back would

you have done so, and did you recognize his right to direct or command you in the matter?

A. No, to the whole question.

Q. Was not Williams entitled to contract for the land long before the contract was made?

A. He was.

Q. What time was it when Williams returned the contract signed by him?

A. I cannot tell; some time in December, 1883.

Q. How long after you received the contract for the land signed by Williams was it before you signed the contract?

A. It was five or six weeks. I know I held it quite awhile.

Q. If you had signed this contract already signed by Williams promptly on its receipt could not Williams have obtained his patent before the notice of any adverse claim?

A. No; I did not receive the contract signed by Williams
610 until after these telegrams from Washington were received.

Q. Had more than six months elapsed after the approval of the list before you were notified of any adverse claim to the land?

A. Yes, sir; the six months expired November 5, 1883, and no notice of any kind was received by me until December 15, 1883.

Q. Six months after the approval of the land to the State cannot the applicant under the law upon full payment obtain a patent for the land?

Ans. He can.

Q. Did you have any discretion to refuse in your official capacity to enter into the contract with Williams for the purchase of this land?

(Objected to by solicitor for plaintiff upon the ground that it calls for his opinion upon a question of law; that the best and only evidence of his official discretionary powers is an act of the Legislature of the State of Nevada entitled "An act to provide for the selection and sale of lands that have been or may hereafter be granted by the United States to the State of Nevada," approved March 5, 1873.)

A. I don't know that I did.

Q. Is there anything contained in approved list No. 2,
611 Eureka district, two-million-acre grant, or its certification, to prevent you entering into contract with applicants for the lands embraced therein?

(Objected to by plaintiff's solicitor on the ground that said approved list No. 2 is itself the best evidence of what it contains.)

A. Not that I ever found.

Q. Did you, in your official capacity, have any notice of any valid existing interfering right against the State's selection to the land in controversy?

A. No, sir.

Q. What is the paper title that the State receives from the United States for lands granted to the State?

A. The approved lists. This list No. 2 is the patent or title to all lands described therein.

Q. In your official action in regard to the land in controversy did you deviate from the usual routine of business pursued in all other cases?

A. As far as the contract is concerned I did. I held it after it was returned to me signed by Mr. Williams for several weeks before I signed it myself. In all other respects there was no deviation.

Redirect:

Witness here identifies approved list No. 2 and says this is the State's title and only title to all lands described therein.

Pl'ff here offers in evidence said approved list No. 2, which
612 was admitted without objection, marked Ex. O, and is as follows, omitting therefrom all lands not in controversy herein:

COMPLAINANT'S EX. O. T. J. E., Com'r.

4–207.

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,
WASHINGTON, D. C., *May 10th*, 1883.

I, N. C. McFarland, Commissioner of the General Land Office, do hereby certify that the annexed transcript of clear list No. 2 of lands selected by the State of Nevada in the Eureka district under the provisions of the act of Congress approved June 16th, 1880, is a true and literal exemplification of the original list now on file in this office.

In testimony whereof I have hereunto subscribed my name and caused the seal of this office to be affixed, at the city of Washington, on the day and year above written.

[SEAL.]

N. C. McFARLAND,
Commissioner of the General Land Office.

GENERAL LAND OFFICE, *May 3d*, 1883.

The tracts embraced in the following list have been carefully examined and are found to be free from conflicts and to inure to the State for the purposes indicated.

J. J. BARNES.
HENRY HOWES,
Chief of Pre-Emption Division.

612½ *List No. 2, exhibiting the tracts of public land situate in the district of lands subject to sale at Eureka, Nevada, which have been selected for the State of Nevada under the provisions of the act of Congress approved June 16th, 1880, entitled "An act to grant to the State of Nevada lands in lieu of the 16th and 36th sections in said State."*

Date of selection.	No. of acres.	Description of tracts.	Sec.	Town.	Range.	Area of tracts.	Area for which accepted by State.	Remarks.
Sept. 2d.....	24	E. ½ of S. E. ¼.....	33	8	50	80.00	80.00	4731
" "	"	W. ½ of S. W. ¼.....	34	"	50	80.00	80.00	4731

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE, *May 4th*, 1883.

It is hereby certified that the tracts described in the foregoing list are embraced in the original lists now on file in this office of lands selected in the Eureka district, Nevada, by a duly authorized agent of said State, under the provisions of the act of Congress approved June 16, 1880, above cited. It is further certified that said tracts have been examined and compared with the transcript plats and tract books of this office and are found to be subject to selection and free from conflicts; and it is therefore recommended that the list, embracing 19,653$\frac{89}{100}$ acres, be approved, subject to any valid interfering rights which may have existed at the date of selection
613 and to the right of way of the N. C. railroad as to the following tracts: Lot 4 and S. E. ¼ of N. W. ¼ sec. 2; S. ½ of N. W. ¼ sec. 11, and N. W. ¼ of N. E. ¼ sec. 14, T. 23 N., R. 43 E.

N. C. McFARLAND,
Commissioner.

J. K. McC.

DEPARTMENT OF THE INTERIOR, *5th May*, 1883.

The foregoing list, embracing 19,653$\frac{89}{100}$ acres, is hereby approved, subject to any valid interfering rights which may have existed at the date of selection; also subject to the right of way of the N. C. railroad as to the following tracts: Lot 4 and S. E. ¼ of N. W. ¼ sec. 2; S. ½ of N. W. ¼ sec. 11, and N. W. ¼ of N. E. ¼ sec. 14, T. 23 N., R. 43 E.

M. L. JOSLYN,
Acting Secretary.

C. S. PREBLE.

Signed by said witness in my presence and acknowledged by him to be his testimony.

T. J. EDWARDS, *Com'r.*

The taking of further testimony herein was continued until the 8th day of February, 1886.

T. J. EDWARDS,
Commissioner.

614 MONDAY, *Feb'y* 8, 1886.

Present: Coffin & Torreyson, solicitors for complainant; T. W. Healy, Esq., sol. for def't.

Mr. RICHARD GLUYAS, recalled for complainant, testifies as follows:

In July and August of 1882 I had some correspondence with Mr. Hinckley, register U. S. land office at Eureka, Nevada, concerning the status of the lands in suit.

Witness here produced copy — letter written by him to said Hinckley on the 25th day of July, 1882, and the original answer thereto, of date August 3d, 1882. The letters were here offered in

evidence by plaintiff's solicitor, marked respectively Exhibits O 1 and P, and are as follows:

(Defendant's solicitor objects to the introduction of each of said Exhibits O & P as being incompetent, immaterial, and irrelevant.)

615 COMPLAINANT'S EX. O 1. T. J. Edwards, Com'r.

HOT CREEK, NYE COUNTY, NEVADA, 25 *July*, 1882.

F. H. Hinckley, Esq., register U. S. land office, Eureka.

MY DEAR SIR: Again I take the liberty to ask you is there any change in the J. T. Williams entries, either homestead or desert land, or T. D. Ernest or W. F. Ernest entries since the 15th of last May, when I last called on you. If there is any change please let me know what it is, and I would thank you for a line in reply to this, anyway, so as to be certain this reached you, as our mail is not in a very good condition at present.

Very truly yours, R. GLUYAS.

Endorsed: Filed Nov. 1, 1886. T. J. Edwards, clerk.

616 COMPLAINANT'S EX. P. T. J. Edwards, Com'r.

UNITED STATES LAND OFFICE,
EUREKA, NEVADA, *August* 3*d*, 1882.

Mr. R. Gluyas, Hot Creek, Nevada.

SIR: Your note in relation to the Williams and Ernst entries is at hand. There is no change in relation to Williams' homestead entry. Mr. Williams has informed me that he would try and procure the cancellation of his desert-land entry. We have received no notice as yet of the cancellation of said entry. John D. Ernst has submitted proof to the Department as to the mineral character and non-mineral character of the land adjacent to his pre-emption claim. W. F. Ernst's claim has been patented.

Very respectfully, F. H. HINCKLEY, *Register*.

Endorsed: Filed Nov. 1, 1886. T. J. Edwards, clerk.

617 Witness, further testifying, says that in the summer or spring of 1881 I went to Eureka to inquire into matters concerning the land in suit then entered by Williams as a desert-land entry. I made an arrangement with Hinckley, the register, to inform me immediately if Williams made any change in that entry by relinquishment or otherwise. Mr. Hinckley promised, after being fully informed as to the improvements of Mess. Matthiessen & Ward upon this land, to notify me immediately of any change being made regarding these lands on the records in his office, which promise he repeated to me on different occasions between the summer of 1881 and the date of said Ex. P., August 3d, 1882.

By Mr. TORREYSON:

Q. Why did you not, as the agent of Matthiessen & Ward, file your claim for a preferred right in the State land office for this land?

A. Because we knew we had six months after the final action in Washington on those lands selected by the State in which to file a preferred right in the State land office. There was a contest pending in Washington between Matthiessen & Ward and the State
618 of Nevada as to the selection of these lands, by Matthiessen & Ward applying for a mill site before the lands were certified to the State or pretended to be certified. The lands being so certified before Commissioner McFarland acted in the premises, I was deceived, not knowing that the lands were certified to the State and the lists *laying* the six months provided by law in the State land office, but believed the list to be in Washington with the contest pending. Hence we were cheated out of the time provided by law for filing a preferred claim.

(Defendant's solicitor objects to all the testimony of the witness contained on the preceding page, question and all, as well as the testimony on this page, upon the ground of Mr. Hinckley's inability in his official capacity as register of the United States Land Office to act as agent for any party doing business in his office by informing either party to a controversy of anything that would tend to his advantage or the disadvantage of the other; also on the ground that it is immaterial, irrelevant, and incompetent.)

Further testifying, the witness Gluyas says that on May 19,
619 1879, Joseph T. Williams made a desert-land entry, No. —, embracing said tract; that on July 26, 1879, he, in consideration of $5,000 paid him by the New Philadelphia Silver Mining Company, conveyed to that company by deed said E. ½ of the S. E. ¼ of sec. 33, 8, 50, together with certain water rights and privileges thereto appertaining, as appears of record; that said company, relying upon the good faith of Williams to perfect his title under the desert-land act and thereby that of his assignee and grantee, immediately went into possession of the premises and erected thereon a stamp mill and other valuable improvements at a cost of over $55,000; that in September, 1881, Matthiessen & Ward became the owners for full value of all the rights, property, &c., of said mining company and at once went into possession, which they have since continuously maintained; that some time before the period prescribed by law for making final proof on said entry had expired I became convinced that Williams intended to break faith with his assigneer and to take measures to defeat their interest in the land and deprive them of their valuable improvements thereon; and accordingly they, through their duly constituted representative
620 and agent, made application to the register of the United States land office at Eureka, Nevada, in which district the land is situate, to be advised of any action taken by Williams in the matter of his said entry; that on July 25, 1882, being unadvised of any such action, I addressed to the register at Eureka a letter inquiring whether there "was any change" in the matter of said entry since my

inquiry of May 15, 1882; that on August 3, 1882, the register replied, in writing, as follows: "Mr. Williams informed me that he would try and procure the cancellation of his desert-land entry. We have received no notice as yet of the cancellation of said entry;" that in his said letter of August 3, 1882, said register suppresed the truth and misled me in this. I am informed that on June 9, 1882, the formal written relinquishment, dated May 20, 1882, of the entry *of the entry* of Williams was filed in the local office, which fact, and the further one that the relinquishment has been duly forwarded by the local office to the General Land Office, the said register knew he had never communicated to me, as agent, or to Matthiessen and Ward. I am informed that on August 12, 1882,
621 the order of the Commissioner cancelling said desert-land entry of Williams was received and noted at the local office at Eureka, on which day and for a long time prior thereto Matthiessen and Ward were and since continuously have been in the open, notorious, and visible possession of said E. ½ of S. E. ¼, sec. 33, 8, 50, and the valuable improvements, &c., thereon. I am informed that on August 14, 1881, notwithstanding the fact of such occupation and appropriation of said land, and that Matthiessen and Ward had been unable to obtain from the register at Eureka any information touching any action had by Williams or by the local officers as to his desert-land entry, the said officers accepted from W. W. Bishop, Esq., attorney for said Williams, an application by the selecting agent of the State of Nevada to select said land under the act of Congress approved June 16, 1880; that this application was based upon one dated May 20, 1882, made by Williams to the State authorities to so select said land, said application of Williams being of even date with his relinquishment to the United States of his desert-land entry; that they have already taken the
622 necessary measures to perfect their title to so much land for a mill site, and that the application therefor is now pending in the General Land Office on appeal from the decision of the local officers at Eureka, Nevada, rejecting the same because of the application of the State of Nevada to select said land.

(Defendant's solicitor objects to all the testimony of said witness commencing on line 13, page 39, and ending on line 20 of this page, as being incompetent, irrelevant, and immaterial.)

(NOTE.—The testimony objected to commences on line 25, page —, of this record, ending with line 6 of this page.—Clerk.)

Cross-examination:

Q. When was the application for mill site made by Matthiessen & Ward?

A. In January, 1883.

Q. When was the land certified to the State by the United States?

A. I think it was in May, 1883.

Q. When was the land in controversy certified by the land officers at Eureka to be open to selection by the State?

A. As appears by list No. 24, it was on September 16, 1882.

Q. When was the survey made for a mill site?

A. It was made in early December, 1882, as soon as we
623 could get around to it after learning that the land had been selected by the State.

Q. You spoke about Matthiessen & Ward having a contest with the State about this land in Washington. Do you know if the State of Nevada had any knowledge of such contest or was represented by any counsel?

A. I do not.

Q. Does not list No. 24, signed by F. H. Hinckley, register, and H. Carpenter, receiver, embracing lands in controversy, certify "that the selections are correct and that no valid conflicting right is known to exist?" * * *

A. It does.

Q. I understood you to testify that def't Williams never used the water that flows through the land in controversy adversely to Matthiessen & Ward?

(Pl'ff's sol'rs object to the question on the ground that it is incompetent, immaterial, and irrelevant, not in cross-examination, not pertinent to any issue raised by the pleadings, and that we are not trying the right to the use of water in this case.)

A. He never used any water on the land in controversy to my knowledge; certainly not since August, 1879. I know of no
624 water flowing through the land except, possibly, a little through or touching the northern boundary.

Q. It is not a fact that Williams always used this water to irrigate his land entirely at his own option, without let or hindrance of Matthiessen & Ward or their agents?

(Same objection as to last question.)

A. Yes; because we abide by the bond we purchased of Donohue, giving Williams that right.

Q. The water first flows through the homestead of Williams before it comes on the land in controversy?

(Same objection by reff.)

A. It does.

Q. Did def't Williams ever ask permission of Matthiessen & Ward or their agents to use the water?

(Same objection.)

A. No, sir; the question never arose, there having been as yet no dispute under the bond under which we were acting.

Q. Could you, on the land in controversy, turn off the water so as to prevent its use by defendant Williams?

(Same objection.)

A. No, sir.

RICHARD GLUYAS.

625 Subscribed in my presence by said witness this 8th day of February, A. D. 1886.

T. J. EDWARDS,
Com'r U. S. Cir. Court, 9th Cir. & Dist. Nevada.

Here the taking of further testimony was continued until the 9th day of February, '86.

T. J. EDWARDS,
Commissioner.

TUESDAY, *February 9th*, 1886.

Present: Coffin and Torreyson, sol'rs for complainant; T. W. Healy, for defendant.

C. S. PREBLE, recalled by complainant, testifies as follows, to wit:

By Mr. COFFIN:

Quest. Can you state whether or no clear list No. 24 was ever returned to your office after it was forwarded by you to the U. S. land office at Eureka; and, if so, under what circumstances and for what purpose?

A. List 24 was returned to my office in September, 1883, as the signature o- A. J. Hatch, my predecessor, had been omitted when the selection was made, in August, 1882. We supplied the signa-
626 ture and returned the list September 12, 1883, to F. H. Hinckley, register U. S. land office, Eureka.

Q. By whom was this list returned to you in September, 1883?

A. It was returned by F. H. Hinckley, U. S. register, some time before September 12, 1883. I supplied the missing signature and forwarded the list to Mr. Hinckley.

Q. When the list was sent to you by Mr. Hinckley do you remember of seeing any marginal notes thereon in the column headed "remarks," and especially do you remember seeing the word- "mill site" written on parcel opposite description of land in suit?

A. I have no recollection of it at all.

Q. If it had been there would you probably have noticed it and remembered it?

A. Probably I would not have paid any attention to it.

Q. If those words were on the margin of list 24 when it was returned to your office by Hinckley were they erased in your office by you or any one in your office?

A. No, sir. If there had been any marginal notes or check-
627 marks of any description they would not have been disturbed.

Q. When the list was returned to you, in September, 1883, was it out of your office before you sent it back to Hinckley?

A. No; it was not out; there was no occasion of its going out. In all probability it was sent to Hinckley by return mail.

Q. Had the land in suit been listed and certified to the State before list 24 was returned to you by Hinckley, in September, 1883?

A. Yes, sir. The land was listed May 5, 1883, four months pre-

vious to that time. I simply supplied a signature which had been omitted by inadvertence when the lands were selected by the State.

Q. Have you a copy of the letter written by you to Hinckley when returning list 24 to him?

Ans. I have.

A press copy of the letter is here offered and admitted in evidence without objection, marked Exhibit Q, and is as follows:

EXHIBIT Q. T. J. E., Com'r.

SEPT. 12TH, '3.

Hon. F. H. Hinckley, register U. S. land office, Eureka, Nevada.

628 DEAR SIR: * * * I return herewith your list # 24, dated Sept. 2d, 1882, with the proper signatures, given by myself, who at the above date was a clerk in Gen'l Hatch's office and made copies of all lists. Gen'l Hatch's personal signature could not be had without the paper was held till his return to New York State from Europe, where he is now traveling.

* * * * * * *

Respectfully,

C. S. PREBLE,
M. D. NOTEWARE.

Q. Who were all the deputies and clerks in your office in August and September, 1883, who could have handled or had access to said list No. 24 while the same was in your office at that time?

A. There were only two—M. D. Noteware, deputy, and W. T. Hanford, clerk.

Cross-examination:

Q. What was the date of the selection by the State of the land in controversy?

A. September 2d, 1882.

Q. What was the date of the approval of the land to the State by the Government?

A. May 5, 1883.

629 Q. From official communications to you can you tell the date of the application for mill site by Matthiessen & Ward?

A. From a letter from James Butler, chief clerk, U. S. surveyor general's office, I learn application for survey was made Dec'r 13, 1882.

Q. After the land was selected by the State and the selection allowed and certified by U. S. land officers in Eureka district, could any subsequent application be entertained by them for the disposition of the land?

(Pl'ff's sol'rs object to the question on the general ground that it is incompetent, irrelevant, and immaterial, and especially on the ground that it is calling for the opinion of the witness upon duties of the register of the U. S. land office at Eureka.)

A. The land laws and the rules and practice of the Department will determine that.

Q. In the routine of official business with U. S. land offices has not the selection of lands by the State, after said selection has been allowed and certified, precluded any subsequent application for the same land in U. S. land offices?

630 A. That is the rule, provided the plats have been filed ninety days; it does preclude any subsequent application.

Redirect examination by Mr. TORREYSON:

Q. Mr. Preble, you say in your testimony on cross-examination that this land in controversy was selected by the State September 2, 1882, and approved to the State May 5, 1883. Have you, since you have been in office, had a list approved to the State as soon as this present one?

A. I think so.

Recross-examination:

Q. Was not the October list certified and approved to the State in a shorter time than was the September list?

A. It was approved at the same time—on the same list. The lists from January 3, 1882, to October 2, 1882, inclusive, were approved at the same time.

C. S. PREBLE.

Subscribed in my presence by said witness this 9th day of February, 1886.

T. J. EDWARDS,
Com'r U. S. Cir. Court, Dist. Nevada.

631 *Testimony of W. T. Hanford on Behalf of Complainant.*

FEBRUARY 9TH, 1886.

W. T. HANFORD, being first duly sworn, on oath says:

In the months of August and September, 1883, I was clerk in the Nevada State land office, &c. I have no recollection of list No. 24 being returned to the State land office in August or September, 1883. My business in the land office is such that if the list was returned, as is alleged, to have the missing signature supplied it would not have been submitted to me or have come under my observation for that purpose.

So far as I know, no erasure of any marginal note from list 24 or any other list was ever made by any one in the State land office.

Cross-examination by Mr. HEALY:

Q. In the performance of your duties in the land office you would not necessarily see this list No. 24?

A. No, sir; I would not, and did not see it.

W. T. HANFORD.

Subscribed in my presence by said witness February 9th, 1886.

T. J. EDWARDS,

632 *Com'r U. S. Circuit Court, 9th Cir. & Dist. Nevada.*

M. D. NOTEWARE, called by the complainant, on oath deposes and says:

I am deputy surveyor general of the State of Nevada, and was such deputy during the year 1883. List No. 24 was made out in quadruple copies, as they all are. All four lists are sent to the U. S. local land office. Two of these lists are afterwards returned to us, one permanently retained in the U. S. local land office, and one forwarded to the General Land Office, at Washington. One of these quadruples of list 24 was returned to us by Hinckley, U. S. land register at Eureka, for the signature of A. J. Hatch, which had been inadvertently omitted. My understanding is that this returned list was the one that Hinckley had forwarded to Washington, but of this I am not positive. I supplied the missing signature and returned the list to Hinckley on September 12, 1883. I do not remember of seeing the words "mill site" or any marginal note whatever on this list 24, in the column headed "Remarks." If
633 the words "mill site" were upon this list 24, opposite the lands in suit, they were not erased by me nor by any one in the Nevada State land office, to my knowledge. If there had been or if there were any such marginal notes on that list I would not have disturbed and did not disturbe them. The letter in evidence, Exhibit Q, is in my handwriting.

Cross-examination:

I do not know whether there were any marginal notes on this list at that time. There might have been. I simply supplied the signature.

Redirect:

When this list was returned, in September, 1883, to have the omitted signature of A. J. Hatch supplied I do not think any one saw it except Mr. Preble and myself. Mr. Hanford may have seen it, but the supplying of this signature did not come within the line of his duty.

M. D. NOTEWARE.

Subscribed by said witness in my presence this 9th day of February, 1886.

T. J. EDWARDS,

Com'r U. S. Cir. Court, 9th Cir. & Dist. Nevada.

634 Counsel for complainant here announced that, with the exception of a deed from defendant to the New Philadelphia S. M. Co., which they would offer at a future time, their testimony-in-chief was closed.

The taking of further testimony herein was continued until the 20th of February, 1886, 10 o'clock a. m.

T. J. EDWARDS,
Commissioner.

SATURDAY, *February 20th*, 1886.

Present: T. Coffin, sol'r for pl't'ff; T. W. Healy, sol'r for def't.

Complainant's solicitor now offered in evidence certified copy deed from defendant Williams to the New Philadelphia Silver Mining Company, dated July 26, 1879, which is hereunto annexed, marked Complainant's Exhibit Q 1.

Defendant's solicitor objects to the introduction of said Ex. Q 1 on the grounds—

1st. It is not the best evidence. The presumption is that the original is yet in existence.

635 2d. At the time of the execution of the purported deed by Williams the title (fee-simple) was in the United States and not in defendant Williams.

3d. That at the time of the execution of the purported deed by Williams the land purported to be conveyed was subject to a desert-land entry (No. 158), which desert-land entry is in the nature of a pre-emption right, because it requires money to be expended in bringing water on the land to reclaim it within three years from the time of entry, and is in the nature of privilege or bounty extended to the citizen for his personal advantage and not for the purposes of speculation.

4th. That the purported conveyance of said — by Williams while the title to the same was in the United States and while certain acts were still required by law to be performed by the said Williams is against the policy of the law.

636 COMPLAINANT'S EX. Q 1. T. J. Edwards, Com'r.

Jos. T. Williams
to
New Philadelphia Silver M'g Co.

This indenture, made the twenty-sixth day of July, in the year of our Lord one thousand eight hundred and seventy-nine, between Joseph T. Williams, of Hot Creek, Nye county, Nevada, the party of the first part, and the New Philadelphia Silver Mining Company, a corporation duly organized under the laws of the State of New York, party of the second part, witnesseth:

That the said party of the first part, for and in consideration of the sum of five thousand dollars, gold coin of the United States of America, to him in hand paid by the said party of the second part, the receipt whereof is hereby acknowledged, has granted, bargained, sold, remised, released, conveyed, and quitclaimed, and by these presents does grant, bargain, sell, remise, release, convey, and quitclaim, unto the said party of the second part and to their successors and assigns forever all the right, title, interest, estate, claim, and de-

mand, both in law and in equity, of the said party of the first part in and to that certain lot, piece, or parcel of land, containing eighty acres, situated in Hot Creek, Nye county, Nevada, and more particularly described as follows, viz: Being the E. ½ of S. E. ¼ of sec. 33, township 8 N., range 50 E., Mt. Diablo meridian, together with the exclusive use or right to use all the water needed by the said party of the second part, their successors or assigns, to supply such mills and other metallurgical works which the said party of the second part, their successors or assigns, may construct or cause to be erected or constructed on said premises in said Hot Creek mining
637 district or that may be needed by them, their successors or assigns, for domestic, smelting, milling, mining, or other uses in the prosecuting of their business as a milling and mining company, said water to be taken from the streams and springs upon the ranch or lands of the said party of the first part known as the Hot Creek ranch and springs, at Hot Creek, Nye county, Nevada, and to be conveyed in pipes to said premises and reduction works—

Said party of the first part hereby binding himself, his heirs, executors, and assigns, not to give or sell to any other party the right to use any of the said water, excepting such water as J. W. Merritt may need for a ten (10) stamp mill, to be used only for the reduction of ores from his own mines, provided that said Merritt erects said mill before January 1st, 1880—

Together with all the rights, privileges, and franchises thereto incident, appendant, and appurtenant or therewith usually had and enjoyed, and also all and singular the tenements, hereditaments, and appurtenances thereunto belonging, and the rents, issues, and profits thereof, and also all the estate, right, title, interest and possession, claim and demand whatsoever of the said party of the first part of, in, and to the said premises and every part and parcel thereof; to have and to hold all and singular the premises, with the appurtenances and privileges thereto incident, unto the said party of the second part, their successors and assigns forever; and the party of the first part, for himself and his heirs, doth hereby agree to and with the said party of the second part that he has full right
638 and power to sell and convey the said premises and water rights, and that the said premises are now free and clear from all incumbrances, sales, or mortgages made or suffered by said party of the first part.

In witness whereof the said party of the first part has hereunto set his hand and seal the day and year first above written.

JOSEPH T. WILLIAMS. [SEAL.]

Signed, sealed, and delivered in the presence of—
N. S. TROWBRIDGE.
J. E. CLAYTON.

STATE OF NEVADA, }
County of Eureka, } *ss:*

On this 26th day of July, A. D. one thousand eight hundred and seventy-nine, personally appeared before me, C. G. Hubbard, a no-

tary public in and for the said county of Eureka, Joseph T. Williams, whose name is subscribed to the annexed instrument as a party thereto, personally known to me to be the same person described in and who executed the said annexed instrument as a party thereto, and said Joseph T. Williams duly acknowledged to me that he executed the same freely and voluntarily and for the uses and purposes therein mentioned.

639 In witness whereof I have hereunto set my hand and affixed my official seal the day and year in this certificate first above written.

[L. S.] CHAS. G. HUBBARD,
Notary Public.

Recorded, at the request of N. S. Trowbridge, July 29th, A. D. 1879, at 43 min. past 1 p. m.

GEO. ERNEST, *Recorder,*
By W. S. BRYDEN, *Deputy.*

STATE OF NEVADA, }
County of Nye, } *ss:*

I, W. F. Leon, county recorder of Nye county, Nevada, do hereby certify that the foregoing is a full and true and correct copy of the foregoing instrument as found recorded in Book J, page 334 and 335, Nye county records, as found recorded in my office.

[SEAL.] In witness I have hereunto set my hand and affixed my official seal this the 9th day of February, A. D. 1886.

W. F. LEON,
Co. Recorder of Nye County, Nevada.

640 Here closes the testimony-in-chief for complainant.

T. J. EDWARDS,
Commissioner.

641 COMPLAINANT'S EX. R. T. J. Edwards, Com'r. June 1, 1886.

J. T. Williams and Wife
to
H. B. Campbell.

This indenture, made the ninth day of August, in the year of our Lord one thousand eight hundred and seventy-five, between Joseph T. Williams and his wife, Sophie Williams, of the county of Nye, State of Nevada, as parties of the first part, and H. B. Campbell, of the same county and State, the party of the second part, witnesseth:

That the said parties of the first part, for and in consideration of the sum of three thousand dollars, lawful money of the United States of America, to them in hand paid by the said party of the second part, the receipt whereof is hereby acknowledged, have granted, bargained, sold, remised, released, and forever quitclaimed, and by these presents do grant, bargain, sell, remise, release, and forever quitclaim, unto the said party of the second part and to his heirs

and assigns all and every right, title, and interest in and to the following-described real property, to wit, one hunered and sixty (160) acres of grazing and agricultural land, more or less, situated, lying, and being at the mouth of Hot Creek cañon, commencing at and bounded as follows: Commencing fifty (50) feet due east from the buildings now occupied by said Williams and running from thence to the fence or boundary line of the meadow land north; from thence, as the initial point, south two hundred and fifty (250) rods; from thence east one hundred rods, more or less; from thence north two hundred and fifty (250) rods, and from thence west to the place of beginning.

642 This conveyance is intended to include one certain stone building, now being erected on the aforedescribed premises or land, with all material now on the ground, together with privileges and franchises thereto incident, appendant, and appurtenant or therewith usually had and enjoyed, and also all and singular the tenements, hereditaments, and appurtenances thereto belonging or in anywise appertaining, and the rents, issues, and profits thereof, and also the estate, right, title, interest, property, possession, claim, and demand whatsoever, as well in law as in equity, of the said parties of the first part of, in, or to the said premises and every part and parcel thereof, with the appurtenances; to have and to hold all and singular the said premises, together with the appurtenances and privileges thereto incident, unto the said party of the second part, his heirs and assigns forever.

In witness whereof the said parties of the first part have hereunto set their hands and seals this day and year first above written.

JOS. T. WILLIAMS. [SEAL.]
SOPHIE WILLIAMS. [SEAL.]

STATE OF NEVADA, } ss:
County of Nye, }

On this tenth day of August, A. D. one thousand eight hundred and seventy-five, before me, Justin E. Cook, a notary public in and for said county, residing therein, duly commissioned and sworn, personally appeared Joseph T. Williams and Sophie Williams, his wife, whose names are subscribed to the annexed instrument as parties thereto, severally personally known to me to be the same per-

643 sons described in and who executed the said instrument, and they severally duly acknowledged to me that they executed the same freely and voluntarily and for the uses and purposes therein mentioned; and the said Sophie Williams, wife of said Joseph T. Williams, who is personally known to me to be the person whose name is subscribed to the annexed instrument as a party thereto, having been by me made acquainted with the contents of such instrument, duly acknowledged to me, on an examination apart from and without the hearing of her husband, that she executed the same freely and voluntarily and for the uses and purposes therein mentioned without fear or compulsion or undue influence of her husband, and that she does not wish to retract the execution of the same.

In witness whereof I have hereunto set my hand and affixed my official seal, at my office, in said county, the day and year last above written, A. D. *186*.

[SEAL.] JUSTIN E. COOK,
Notary Public.

Recorded, at the request of H. B. Campbell, Aug. 16, A. D. 1875, at 6 o'clock a. m.

JAS. A. SERVICE, *Recorder.*

644 STATE OF NEVADA, } ss:
County of Nye, }

I, W. F. Leon, county recorder of Nye county, State of Nevada, do hereby certify that the foregoing instrument as found recorded on Book H, page five hundred and fifty-three (553), Nye county records, as found of record in my office, is a full and true copy of the foregoing instrument of record.

In witness whereof I have set my hand and affixed my
[L. S.] official seal, at my office, in said county, this the 16th day of March, A. D. 1886.

W. F. LEON,
Co. Recorder.

(Filed Nov. 1, 1886. T. J. Edwards, clerk.)

645 COMPLAINANT'S EXHIBIT S. June 1, 1886. T. J. Edwards, Com'r.

C. B. Campbell
to
Joseph T. Williams.

This indenture, made the fifteenth day of November, in the year of our Lord one thousand eight hundred and seventy-five, between Henry B. Campbell, of the county of Nye, State of Nevada, party of the first part, and Joseph T. Williams, of the same county and State aforesaid, the party of the second part, witnesseth:

That the said party of the first part, for and in consideration of the sum of two thousand ($2,000.00) dollars, gold coin of the United States of America, to him in hand paid by the party of the second part, the receipt whereof is hereby acknowledged, does by these presents remise, release, and forever quitclaim unto the said party of the second part and to his heirs and assigns forever all that certain lot, piece, or parcel of land situate in the county of Nye, State of Nevada, and bounded and particularly described as follows, to wit: All and every right, title, and interest in and to the following-described real property, to wit: Thirty acres, more or less, of grazing and agricultural land situate, lying, and being at the
646 mouth of Hot Creek cañon, commencing at and bounded as follows: Commencing fifty feet due east from the dwelling

now occupied by the said Williams and running from thence to the north boundary line of the S. E. ¼ of the N. E. ¼ of section 33, in township 8 north, of range 50 east, M. D. M., ten rods, more or less; thence east 68 rods, more or less, to the northeast corner of said described forty-acre tract; thence south 80 rods, more or less, to the southeast corner of said forty-acre tract; thence west 68 rods, more or less, along the south boundary line of said forty-acre tract to a point south of the place of beginning; thence north 70 rods, more or less, to the place of beginning.

This conveyance is intended to include all the land I own in the S. E. ¼ of the N. E. ¼ of the section and township aforesaid, together with the privileges and franchises *and franchises* thereto incident, appendant, and appurtenant or therewith usually had and enjoyed, and also all and singular the tenements, hereditaments, and appurtenances thereto belonging or in anywise appertaining and the rents, issues, and profits thereof, and also all the estate, right, title, interest, property, possession, claim, and demand whatsoever, as well in law as in equity, of the said party of the first part of, in,
647 or to the said premises and every part and parcel thereof, with the appurtenances; to have and to hold all and singular the said premises, together with the appurtenances and privileges thereto incident, unto the said party of the second part, his heirs and assigns forever.

NOTE.—The words " by the said party of the second part," on line eleven, page one, were interlined at my request and with my consent.

In witness whereof the said party of the first part has hereunto set his hand and seal the day and year first above written.

HENRY B. CAMPBELL. [SEAL.]

Signed, seal-, and delivered and acknowledged before George Ernst, subscribing witness.

STATE OF NEVADA, } *ss:*
County of Nye, }

On this twenty-sixth day of September, A. D. one thousand eight hundred and eighty-five, personally appeared before me, W. S. Bryden, county clerk and *ex officio* clerk of the 5th judicial district court in and for the said Nye county, GEORGE ERNST, personally known to me to be the same person whose name is subscribed to the annexed instrument as a witness thereto, who, being by me duly sworn, deposed and said that he resides in Belmont, Nye county, Nev.; that he was present and saw Henry B. Campbell,
648 personally known to him to be the same person described in and who executed the said annexed instrument as a party thereto, sign, seal, and deliver the same, and that the said Henry B. Campbell acknowledged in the presence of said affiant that he executed the same freely and voluntarily and for the uses and purposes therein mentioned, and that he, the said affiant, subscribed his name as a witness thereof.

[SEAL.] In witness whereof I have hereunto set my hand and affixed the seal of said court the day and year in this certificate first above written.

W. S. BRYDEN,
County Clerk,
By GEO. NICHOLL, *Deputy.*

Recorded, at request of Geo. Ernst, Sept. 28th, 1885, at 30 min. past 9 a. m.

M. R. DELANO,
Co. Recorder.

STATE OF NEVADA, } ss:
County of Nye, }

I, M. R. Delano, county recorder of Nye county, State of Nevada, do hereby certify that the foregoing is a full, true, and cor-
649 rect copy of the original deed as appears of record in Book "L" of Deeds, Nye county, Nevada, records, pages 559 and 560.

[SEAL.] In witness whereof I have hereunto set my hand and affixed my official seal this 2nd day of Oct., 1885.

M. R. DELANO,
Co. Recorder, Nye County, Nevada.

(Endorsed:) Dated Nov. 15, 1875. H. B. Campbell to Jos. T. Williams. Cert. copy deed. Acknowledged Sept. 26, 1885. Recorded September 28, 1885, in Book L of Deeds, pp. 559 and 560, Nye Co., Nev., records. Filed Nov. 1, 1886. T. J. Edwards, clerk.

650 UNITED STATES OF AMERICA. J. McM.

DEPARTMENT OF THE INTERIOR,
WASHINGTON, D. C., *March* 13, 1886.

Pursuant to section 882 of the Revised Statutes I hereby certify that the annexed is a true copy or tracing of a paper on file in this Department among the papers in the case of Matthiessen and Ward *vs.* J. T. Williams.

[SEAL.] In testimony whereof I have hereunto subscribed my name and caused the seal of the Department of the Interior to be affixed the day and year first above written.

H. L. MULDROW,
Acting Secretary of the Interior.
G. M. L.

(Here follows diagram marked page 650*a*.)

650½ (Here follows diagram marked page 651.)

652 COMPLAINANT'S EX. V. T. J. Edwards, Com'r.

In the Circuit Court of the United States, Ninth Circuit and District of Nevada, Having Been Removed from the District Court of the Sixth Judicial District of the State of Nevada in and for the County of Eureka.

FRANZ O. MATTHIESSEN and LEBBEUS B. WARD, Plaintiffs, *against* JOSEPH T. WILLIAMS, Defendant. } Amended Complaint.

The said Franz O. Matthiessen and Lebbeus B. Ward, by way of amended complaint, complain of the said Joseph T. Williams, the defendant, and for cause of action allege that on the 26th day of July, 1879, the defendant, Joseph T. Williams, for and in consideration of the sum of five thousand dollars to him then paid, signed, sealed, acknowledged, and delivered to the New Philadelphia Silver Mining Company a deed in the words and figures following, to wit:

This indenture, made the twenty-sixth day of July, in the year of our Lord one thousand eight hundred and seventy-nine, between Jos. T. Williams, of Hot Creek, Nye county, Nevada, the
653 party of the first part, and the New Philadelphia Silver Mining Company, a corporation duly organized under the laws of the State of New York, party of the second part, witnesseth: That the party of the first part, for and in consideration of the sum of five thousand dollars, gold coin of the United States of America, to him in hand paid by the said party of the second part, the receipt whereof is hereby acknowledged, has granted, bargained, sold, remised, released, conveyed, and quitclaimed, and by these presents does grant, bargain, sell, remise, release, convey, and quitclaim, unto the said party of the second part and to their successors and assigns forever all the right, title, interest, estate, claim, and demand, both in law and in equity, of the said party of the first part in and to that certain lot, piece, or parcel of land, containing eighty acres, situated in Hot Creek, Nye county, Nevada, and more particularly described as follows, viz. being the E. ½ of S. E. ¼ of sec. 33, township 8 N., range 50 E., Mt. Diablo meridian, together with the exclusive use or right to use all the water needed by the said party of the second part, their successors and assigns, to supply such mills and other metallurgical works which the said party of the second part, their successors or assigns, may construct or cause to be erected or constructed on said premises in said Hot Creek mining district or that may be needed by them, their successors or assigns, for
654 domestic, smelting, milling, mining, or other uses in the prosecution of their business as a milling and mining company, said waters to be taken from the streams and springs upon the ranch or lands of the said party of the first part known as the Hot Creek ranch and springs, at Hot Creek, Nye county, Nevada, and to be conveyed in pipes to said premises and reduction works,

said party of the first part hereby binding himself, his heirs, executors, and assigns, not to give or sell to any other party the right to use any of the said water, excepting such water as J. W. Merritt may need for a ten (10) stamp mill, to be used only for the reduction of ores from his own mines, provided that said Merritt erects said mill before January 1st, 1880, together with all the rights, privileges, and franchises thereto incident, appendant, and appurtenant or therewith usually had and enjoyed, and also all and singular the tenements, hereditaments, and appurtenances thereunto belonging, and the rents, issues, and profits thereof, and also all the estate, right, title, interest and possession, claim and demand whatsoever of the said party of the first part of, in, and to the said premises and every part and parcel thereof; to have and to hold all and singular the premises, with the appurtenances and privileges thereto incident, unto the said party of the second part, their successors and assigns forever; and the party of the first part, for himself and his heirs, doth hereby agree to and with the said party of the second part that he has full right and power to sell and convey the said premises and water rights, and that the said premises are now free and clear from all incumbrances, sales, or mortgages made or suffered by said party of the first part.

655

In witness whereof said party of the first part has hereunto set his hand and seal the day and year first above written.

JOSEPH T. WILLIAMS. [SEAL.]

Signed, sealed, and delivered in the presence of—
N. S. TROWBRIDGE.
J. E. CLAYTON.

That said deed, on the 26th day of July, 1879, was duly recorded in the records of Nye county, Nevada, in Book J of Deeds, pages 534, 535 thereof.

That said Williams violated the express covenant in said deed that he had at the date thereof full right and power to sell and convey the premises and water rights therein described, in this, that he did not have at said time any such right and power whatever, to the damage of said company and of these plaintiffs by reason of the conveyances hereinafter set forth in a large sum, to wit, the sum of fifty-five thousand dollars.

656

That said defendant Williams also violated the covenants in said deed as follows: That said deed contained the words "grant, bargain, and sell," unrestrained by any other terms in said deed, and thereby said defendant covenanted and agreed for himself and his heirs to and with the said New Philadelphia Silver Mining Company and its assigns that previous to the execution of said deed, to wit, prior to July 26, 1879, the said defendant had not conveyed the said real estate or any right, title, or interest therein to any other person whatever than said company, whereas in fact said defendant had, prior to said date of July 26, 1879, conveyed the said real estate described in said deed or the right, title, and interest therein to a person other than the company, to the damage of said company and

these plaintiffs by reason of such conveyance in a large sum, to wit, the sum of fifty-five thousand dollars.

That said defendant Williams also violated the covenant in said deed that the premises therein described were at the date of said deed, to wit, July 26, 1879, free and clear from all incumbrances, sales, or mortgages made or suffered by said defendant, whereas in fact at said date the said premises were not free and clear of
657 all encumbrances, sales, or mortgages made by him, the said defendant, he having prior to said date made and executed the following deeds which affected said property, to wit: A deed dated March 30, 1875, made by Joseph T. Williams and wife to M. M. Donohue, recorded March 30, 1875, in Nye county, Nevada, records, Book I of Deeds, pages 46 and 47, said deed conveying certain property therein described as the Upper ranch, together with all water rights connected therewith or pertaining thereto, which deed affected the covenant with reference to the water conveyed in and by said deed of July 26, 1879; also in and by a deed dated August 9, 1875, made by said Williams to H. B. Campbell, which said deed is recorded in Book H of Deeds, pages 553, &c., Nye county, Nevada, records, wherein, for the consideration named therein, said Williams conveyed lands as hereinafter set forth; and these plaintiffs have expended a large sum of money, to wit, over five thousand dollars, in proceedings and for expenses in endeavoring to obtain good title to the said lands and water and water rights described in deed of July 26, 1879, all to the damage of said company and these plaintiffs in a large sum, to wit, the sum of fifty-five thousand dollars.

That the New Philadelphia Silver Mining Company, by deed dated April 15, 1881, recorded May 5, 1881, in Liber K of
658 Deeds, 474 to 483, inclusive, Nye county, Nevada, records, conveyed to Henry B. Stanton, receiver of said company, appointed by an order of the supreme court of the State of New York for the first judicial department, dated the seventh day of July, 1880, among other things, all the lands described in said deed of July 26, 1879, and all mills and buildings thereon, and also all the waters and water rights described in said deed of July 26, 1879, and also all the personal property of said company; and said Henry B. Stanton, as receiver as aforesaid, by deed dated the 16th day of September, 1881, conveyed to the plaintiffs, Franz O. Matthiessen and Lebbeus B. Ward, all that he had received in and by said deed and all that he was entitled to as receiver of said company, which said deed was recorded November 14, 1881, in Book K of Deeds, pages 608 to 629, inclusive, Nye county, Nevada, records.

That by bill of sale made September 16th, 1881, and recorded in Nye county, Nevada, records March 11th, 1884, in Book C of Miscellany, pages 2 to 18, inclusive, Henry B. Stanton, as receiver of the New Philadelphia Silver Mining Company, of the first part, conveyed to Franz O. Matthiessen and Lebbeus B. Ward, of the second part, all the right, title, and interest of the said company and Henry B. Stanton, as the receiver of said company, in
659 and to all rights, claims, and demands, legal or equitable, choses in action, and personal property of every description, wheresoever situated or existing.

That David O. Neil, sheriff of Nye county, Nevada, by deed dated October 7, 1881, and recorded October 7, 1881, in Book K of Deeds, pages 591 to 593, Nye county, Nevada, records, conveyed to Lebbeus B. Ward all the land, water, and water rights described in said deed of July 26, 1879.

That David O. Neil, sheriff as aforesaid, by deed dated October 7, 1881, and recorded October 7, 1881, in Book K of Deeds, pages 589 and 590, Nye county, Nevada, records, conveyed to Lebbeus B. Ward, with other property, one ten-stamp quartz mill and mill site situated at Hot Creek, Nye county, State of Nevada, and known as the New Philadelphia Silver Mining Company's mill and mill site, being part of the premises described in the deed of July 26, 1879.

That David O. Neil, sheriff as aforesaid, by deed dated February 10, 1882, and recorded February 10, 1882, in Book K of Deeds, pages 720 to 722, Nye county, Nevada, records, conveyed to Lebbeus B. Ward, with other property, eighty acres of land in Hot Creek, Nye county, State of Nevada, and known as the New Philadelphia Silver Mining Company's mill site, having thereon one ten-stamp quartz mill, said mill site being part of the land described in the deed of July 26, 1879.

660 That David O. Neil, sheriff as aforesaid, by deed dated February 10th, 1882, and recorded February 10th, 1882, in Book K of Deeds, pages 722 to 728, inclusive, Nye county, Nevada, records, conveyed to Lebbeus B. Ward, with other property, all the lands, water, and water rights described in said deed of July 26, 1879.

That Lebbeus B. Ward, by deed dated December 2, 1882, and recorded December 13th, 1882, in Book L of Deeds, pages 117 to 123, Nye county, Nevada, records, conveyed to Franz O. Matthiessen an undivided half interest in the property conveyed to said Ward by the foregoing described deeds of David O. Neil, sheriff of Nye county, Nevada, the said Matthiessen being at all times the owner of the undivided half interest in the premises—quartz mill and other property in said deeds described—from the date of the conveyances made by said sheriff to said Ward.

That Henry B. Stanton, as receiver of the New Philadelphia Silver Mining Company, by deed dated February 9, 1882, and recorded February 23rd, 1882, in Book K of Deeds, pages 748 to 758, inclusive, Nye county, Nevada, records, corrects no defects in the deed made by said Henry B. Stanton to Franz O. Matthiessen and Lebbeus B. Ward, dated September 16th, 1881, and recorded November 14th, 1881, in Book K of Deeds, pages 608 to 629, Nye county,

661 Nevada, records. Said deed of February 9th, 1882, conveys to the said Matthiessen and Ward all the right, title, and interest of said receiver and said New Philadelphia Silver Mining Company to the right of redemption as provided in the laws of Nevada for said company as a judgment debtor or its successors in interest in the whole or any part of the property of said company in the State of Nevada or arising in any way under any other laws of the State of Nevada.

That by reason of said deeds and bill of sale said plaintiffs be-

came and *has* been ever since the date of said receiver's bill of sale entitled to all the lands and waters and water rights described in said deed of July 26, 1879, and all actions and causes of action arising or growing out of any of the covenants in said deed, either expressed or implied, and by reason thereof is entitled to prosecute this suit.

The plaintiffs further allege that, under and by virtue of the deed of July 26, 1879, and in full faith and reliance upon the same and the covenants and agreements therein contained, the said company erected and caused to be constructed in and upon said premises milling and metallurgical works and improvements, and in the construction of said works and improvements paid out and
662 expended in and upon said premises a large sum of money in addition to the price therefor paid said defendant, to wit, the sum of fifty thousand dollars.

That on the 16th day of September, A. D. 1881, plaintiffs became, and ever since have been and now are, the owners of all the right, title, claim, and interest of said New Philadelphia Silver Mining Company and the receiver thereof in or to said lands and premises and improvements thereon and all the right, title, claim, and interest of said company under and by virtue of said deed from said Williams to said company.

That on said 16th day of September, 1881, plaintiffs became, ever since have been, and now are the owners of all the right, title, and interest of said company and the receiver thereof in and to all and singular the rights, claims, legal or equitable, demands, choses in action, fixtures, and personal property and chattels of every description, wheresoever situated or existing, or in which said company or said receiver thereof had any interest, right, or demand, legal, equitable or otherwise, including all claims, rights, legal or equitable, demands, choses in action of said company or the receiver thereof against said defendant.

663 And plaintiffs aver that at the time of said sale and conveyance of said premises by said defendant to said company said defendant did not have full or any right or power to sell or convey the same or any part thereof; that at said time, to wit, July 26th, 1879, said premises were not free and clear from all sales and incumbrances made or suffered by said defendant, and that previous to said time said Williams had conveyed the said lands or the larger part thereof and all his right, title, and interest therein to another person than said company.

Plaintiffs further allege that on the 9th day of August, 1875, said Joseph T. Williams and his wife, Sophie Williams, by their deed of grant, bargain, and sale did, in consideration of the sum of three thousand dollars to them paid for that purpose, grant, bargain, and sell to one H. B. Campbell the following-described premises, to wit, all and every right, title, and interest in and to the following-described real property, to wit, one hundred and sixty acres (160) of grazing and agricultural land, more or less, situate, lying, and being at the mouth of Hot Creek canyon, commencing at and bounded as follows: Commencing fifty (50) feet due east from the building then

occupied by said Williams and running thence to the fence
664 or boundary line of the meadow land north; from thence as the iniatial point south two hundred and fifty (250) rods; from thence east one hundred (100) rods, more or less; from thence north two hundred and fifty (250) rods, and thence west to the place of beginning; that the premises so sold and conveyed to said Campbell included nearly the whole of the lands and premises mentioned and described in said deed of July 26th, 1879, and embraces and includes the lands and premises upon which is situated the mill, works, and improvements aforesaid.

That ever since said 9th day of August, 1875, said H. B. Campbell has claimed to be the owner of that part of the property conveyed to the New Philadelphia Silver Mining Company by deed dated July 26, 1879, which is included in the deed to him by said defendant of August 9th, 1875, and also of all the right, title, and interest therein of said defendant and his said wife.

That at the time of the conveyance of said premises by defendant to said company as aforesaid and at the time plaintiffs succeeded to the rights of said company in said premises and under said agreement and conveyance neither said company nor plaintiffs or either of them knew that said premises or any part thereof
665 had been by said Williams and wife or either of them so as aforesaid sold, incumbered, transferred, or conveyed.

That by reason of the said acts of said defendant and the breach and violation by said defendant of the said deed and agreement of July 26th, A. D. 1879, and the covenants and agreements therein contained, and by reason of the matters hereinbefore set forth, plaintiffs have been damaged in a large sum, to wit, the sum of fifty-five thousand dollars.

The plaintiffs further allege, by way of special damage, that the defendant, knowing all the facts, fraudulently concealed from the New Philadelphia Silver Mining Company, at the time of the sale of said premises, July 26, 1879, that he had made a conveyance of a large part thereof to said H. B. Campbell, as hereinbefore set forth, and said company and these plaintiffs, when they purchased the said premises described in said deed of July 26, 1879, were ignorant of the fact that said conveyance had been made, and, being ignorant of the same and relying on the covenant of said defendant that he had not conveyed the same to any other person than the New Philadelphia Silver Mining Company, and that he had at that time full power and authority to make said deed of July 26, 1879, they
666 erected a mill and reduction works, as hereinbefore set forth, and said defendant stood by and permitted said company to expend on said premises which he had sold as aforesaid to said Campbell in 1875 a large sum of money, to wit, over fifty thousand dollars, to the damage of said company and these plaintiffs of said sum of fifty thousand dollars.

The plaintiffs further allege by way of special damage that the defendant fraudulently misrepresented to said company that the land conveyed by the deed of July 26, 1879, was part of a desert-land entry of two hundred and forty acres which the defendant had a

right to convey, whereas, in fact, as he well knew, he had no right or authority then to convey any part of said desert-land entry; that said company, believing that he had such right and authority, and relying upon defendant's covenant that he had full power and authority to make said deed of July 26, 1879, paid said defendant five thousand dollars and took possession of said lands and erected a mill and reduction works thereon, as hereinbefore set forth, and said defendant stood by and permitted said company to expend on said premises a large sum of money, to wit, over fifty thousand dollars,
667 to the damage of said company and these plaintiffs of said sum of fifty thousand dollars.

Wherefore and by reason of the premises the plaintiffs pray judgment against the said defendant for the sum of fifty-five thousand dollars, with legal interest and costs of suit.

A. E. CHENEY AND
JAMES D. TORREYSON,
Attorney- for Plaintiffs.

ABBETT & FULLER, *Of Counsel.*

UNITED STATES OF AMERICA,
Southern District of New York, } *ss:*

LEBBEUS B. WARD, being duly sworn, says: I am one of the plaintiffs in the above-entitled action. The foregoing complaint is true of my own knowledge except as to the matters therein stated to be alleged on information and belief, and as to those matters I believe it to be true

LEBBEUS B. WARD.

Sworn to before me March 1, 1886.
[SEAL.]

HENRY SCHMITT,
Notary Public, N. Y. Co.

Endorsed: In the U. S. cir. court, ninth circuit, district of
668 Nevada. Franz O. Matthiessen and Lebbeus B. Ward, plaintiffs, *vs.* Joseph T. Williams, defendant. Amended complaint. Filed March 17, 1886. T. J. Edwards, clerk. A. E. Cheney and James D. Torreyson, att'ys for pl'ffs. Abbett & Fuller, of counsel.

UNITED STATES OF AMERICA,
District of Nevada, } *ss:*

I, T. J. Edwards, clerk of the circuit court of the United States for the district of Nevada, do hereby certify that the above and foregoing is a full, true, and correct copy of the original complaint now on file and of record in my office.

In testimony whereof I have hereunto set my hand and affixed the seal of the said court, at my office, in Carson City, this the first day of June, A. D. 1886, and in the year of our Independence the 110th.

[SEAL.] T. J. EDWARDS, *Clerk.*

(Filed Nov. 1, 1886. T. J. Edwards, clerk.)

669 COMPLAINANT'S EX. W. T. J. Edwards, Com'r.

In the Circuit Court of the United States, Ninth Circuit and District of Nevada.

FRANZ O. MATTHIESSEN and LEBBEUS B. WARD, Plaintiffs,
against
JOSEPH T. WILLIAMS, Defendant.

The above-named defendant appears herein, by his attorneys, and demurs to the amended complaint of plaintiff filed herein upon the ground that the said complaint does not state facts sufficient to constitute a cause of action, in this: The said amended complaint states that the defendant made to the New Philadelphia Silver Mining Company a deed to certain lands described in said amended complaint on the 26th day of July, A. D. 1879; that said defendant covenanted in said deed to grant, bargain, and sell unto the New Philadelphia Silver Mining Company the land described, to wit,
670 the E. ½ of S. E. ¼ of sec. 33, township 8 north, range 50 E., Monte Diablo meridian, and that defendant had not the power to sell the said land free and unincumbered, the said land having been deeded by defendant and wife to M. M. Donohue, recorded March 30, 1875, in Nye county records, Book I of Deeds, pages 46 and 47; also by a deed made by said Williams to H. B. Campbell August 9, 1875, recorded in Book H of Deeds, pages 553 *et seq.*, Nye county records, which conveyance, together with the conveyance made to Donahue aforesaid, was in violation of the covenant of the defendant contained in said deed to the New Philadelphia Silver Mining Company and affected the covenant with reference to the water conveyed in and by said deed of July 26th, 1879.

That the complaint alleges and shows that at the time of the making and delivery of the deed by Williams to the New Philadelphia Silver Mining Company that the deed to Donahue and Campbell as aforesaid were on the public county records of Nye county, in the volumes and at the pages therein named, and that said public records were legal notice to the world and to the New Philadelphia Silver Mining Company in particular, and that the legal presumption is that the New Philadelphia Silver Mining Com-
671 pany bought the land subject to all incumbrances of record.

The complaint shows that the New Philadelphia Silver Mining Company by deed conveyed to Henry B. Stanton, receiver of said company, appointed by order of the supreme court of New York July 7, 1880, the lands described in the deed of July 26, 1879, and the said Stanton conveyed the said land to the plaintiffs, Matthiessen and Ward; that said Stanton also made a bill of sale as receiver of said company in and to all rights, claims, and demands, legal or equitable, &c.

That the said land was sold by David O. Neil, sheriff of Nye county, and it was deeded by him as sheriff to Lebbeus B. Ward, and that said Lebbeus B. Ward conveyed one-half interest in said property, among other, to Franz O. Matthiessen; all of which facts as alleged

in the complaint show that the conveyances alleged to be the cause of complaint were recorded in the public records of the county nearly four years previous to the execution of the deed of July 26th, 1879.

That in the absence of any express written agreement to the contrary the New Philadelphia Silver Mining Company must
672 have and did purchase the said land under full notice of the incumbrances as they appeared on the public records of the county and subject to such incumbrances as were matters of public record, and therefore notice to the world in general and to the purchaser in particular; that the plaintiffs are bound by the notice imparted by the public records of the county in which the land is situate and cannot recover in this action.

That the plaintiffs have not been damaged by any act of defendant's alleged in said amended complaint.

S. W. HEALY AND
H. K. MITCHELL,
Attorneys for Defendant.

I hereby certify that in my opinion the foregoing demurrer is well founded in point of law.

S. H. WELLS, *Of Counsel.*

(Endorsed:) In the U. S. circ. court, ninth circuit, district of Nevada. Franz O. Matthiessen and Lebbeus B. Ward, plaintiffs, *vs.* Joseph T. Williams, defendant. Demurrer to amended complaint. Filed M'ch 30, 1886. T. J. Edwards, clerk. S. W. Healy and H. K. Mitchell, attorneys for defendant.

673 UNITED STATES OF AMERICA, } *ss:*
District of Nevada, }

I, T. J. Edwards, clerk of the circuit court of the United States for the district of Nevada, do hereby certify that the above and foregoing is a full, true, and correct copy of the original demurrer now on file and of record in my office.

In testimony whereof I have hereunto set my hand and
[L. S.] affixed the seal of said court, at my office, in Carson City, this the first day of June, A. D. 1886, and in the year of our Independence the 110th.

T. J. EDWARDS, *Clerk.*

(Filed Nov. 1, 1886. T. J. Edwards, clerk.)

674 COMPLAINANT'S EX. "X." T. J. Edwards, Com'r.

J. T. Williams
to
N. S. Trowbridge. } Bond.

Know all men by these presents that Jos. T. Williams, of Hot Creek, Nye Co., Nevada, is held and firmly bound unto N. S. Trowbridge, of Tybo, Nye Co., Nevada, in the sum of five thousand dol-

lars, gold coin of the United States of America, to be paid to the said N. S. Trowbridge, his executors, administrators, or assigns; for which payment, well and truly to be made, he binds his heirs, executors, and administrators firmly by these presents.

Sealed with his seal and dated the 27th day of November, A. D. one thousand eight hundred and seventy-eight.

The condition of the above obligation is such that if the above-bounden obligor shall, on the 27th day of June, A. D. one thousand eight hundred and seventy-nine, make, execute, and deliver unto the said N. S. Trowbridge or to his assigns (provided that the said N. S. Trowbridge shall, on or before that day, have paid to the said obligor the sum of twenty-five thousand dollars, gold coin of the United States of America, the price by said
675 N. S. Trowbridge agreed to be paid therefor) a good and sufficient deed for conveying and assuring to the said N. S. Trowbridge, free from all incumbrances, all right, title and interest, estate, claim and demand, both in law and equity, as well in possession as in expectancy of, in, or to that certain portion, claim, and mining right, title, or property on certain veins or lodes of rock containing precious metals of gold, silver, and other minerals, and situated in the Argenta mining district, county of Nye and State of Nevada, described as follows, to wit, known and recorded as the "Richmond," "Empire," "Crescent," "Bullion," "Dexter," and "Bismark," containing 1,500 feet each in length and 600 feet each in width, as is shown by the mining records of said district; also sufficient water at Hot Creek, Nevada, to supply a twenty-stamp —, with pans, etc., and a mill site near said Hot Creek, with ground for wood yards, buildings, and other necessary uses of said mill, then this obligation to be void; otherwise to remain in full force and virtue.

JOS. T. WILLIAMS. [SEAL.]

Signed, sealed, and delivered in the presence of—
JAS. S. TROWBRIDGE.

Recorded, at request of N. S. Trowbridge, Dec. 16th, 1878, at 49 min. past 8 a. m.
JAS. A. SERVICE, *Recorder*,
By GEORGE ERNEST, *Dep.*

676 TYBO, NEVADA, *June 23d*, 1879.

Know all men by these presents that I have this day extended the bond of the six mines situated in Old Dominion and Rattlesnake canyon, near Hot Creek, Nye county, Nevada, and water right and mill site given by me to N. S. Trowbridge and expiring June 27th, 1879, for the further period of thirty days from said June 27th, being to July 27th, 1879, the conditions of the bond in all other respects remaining the same. JOS. T. WILLIAMS.

Recorded, at the request of N. S. Trowbridge, June 24, A. D. 1879, at 35 min. past 12 m.

GEO. ERNEST, *Recorder*,
By W. S. BRYDEN, *Deputy.*

677 N. S. Trowbride to J. E. Clayton.

Know all men by these presents that whereas I, N. S. Trowbridge, of Tybo, Nye county, Nevada, in and by my letter, warrant, or power of attorney in writing, bearing date about January or February, A. D. 1879, did make, constitute, and appoint J. E. Clayton my true and lawful attorney for the purpose and with the power therein set forth, and which are in sense and substance as follows, giving him, the said J. E. Clayton, full power to bond or sell or in any manner dispose of those certain six mining claims known as the "Empire," "Richmond," "Dexter," "Crescent," "Bismark," and "Bullion," situated in Hot Creek mining district, Nye county, Nevada, the said six mines being the same mines he at that time held by myself under a bond from J. T. Williams, of Hot Creek, Nye county, Nev., and the same mines subsequently bonded by said J. E. Clayton under the said power of attorney to Wm. G. Smith, of New York city, N. Y., under date of March 15th, 1879: Now, therefore, I, the said N. S. Trowbridge, for divers good causes and considerations me hereunto moving, have revoked, countermanded, annulled, and made void the said letter, warrant, or power of attorney and all
678 power or authority thereby given or intended to be given to the said J. E. Clayton.

In witness whereof I have hereunto set my hand and seal the twenty-third day of June, A. D. 1880.

N. S. TROWBRIDGE. [SEAL.]

STATE OF NEVADA, } ss:
County of Nye, }

On this 25th day of June, A. D. one thousand eight hundred and eighty, personally appeared before me, George Turin, a notary public in and for the said county of Nye, N. S. Trowbridge, whose name is subscribed to the annexed instrument as the party thereto, personally known to me to be the same person described in and who executed the said annexed instrument as the party thereto, and the said N. S. Trowbridge did duly acknowledge to me that he executed the same freely and voluntarily and for the uses and purposes therein mentioned.

In witness whereof I have hereunto set my hand and affixed my official seal the day and year in this certificate first above written.

[SEAL.] GEORGE TURIN,
Notary Public.

Recorded, at the request of N. S. Trowbridge, June 25th, 1880, at 20 min. past 7 a. m.

GEORGE ERNEST, *Recorder,*
By A. M. HAWKINS, *Deputy.*

679 *Agreement to J. E. Clayton with W. G. Smith.*

Whereas N. S. Trowbridge, of Tybo, Nye Co., Nevada, under date of November 27th, 1878, has bonded certain properties in Nevada

belonging to Hon. J. T. Williams as follows, water rights and mill site at Hot Creek; Empire & Richmond mines, near Old Dominion cañon; Bismark, Dexter, Crescent, & Bullion mines, at Argenta; and whereas said Trowbridge has empowered me to dispose of the same:

Now, therefore, for and in consideration of the sum of one dollar and other valuable considerations, I hereby agree with Wm. G. Smith, of New York city, to give him the option of purchasing said properties under the bond on the following terms, viz: Five thousand dollars cash upon the legal transfer to him of the water rights, mill site, & 160 acres of land; five thousand dollars cash upon the legal transfer by patent to him of the Empire and Richmond mines; fifteen thousand dollars cash upon the legal transfer by patent to him of the Dexter, Bismark, Bullion, and Crescent mines, together with five thousand shares of the present capital stock of the New Philadelphia Silver M'g Co. In case said Smith shall elect to organize a new company with the above properties and a nominal capital of 500,000 dollars, then I am to receive five thousand shares of the stock of the new company in lieu of the stock of the New Philadelphia Company, it being understood and agreed that I
680 will use every effort to have included in this transfer the entire ownership of the hot springs, water rights, and ranch belonging to Mr. Williams and any other properties that can be secured or obtained from said Williams and others. I agree to take charge of and superintend the management of said properties, erect the requisite reduction works, and become identified with the successful working of the same for the stated sum of five hundred dollars per month and such further consideration in the future as said Smith shall deem equitable and just.

New York, March 15, 1879.

J. E. CLAYTON. [SEAL.]

ALFRED KIMBER.

STATE OF NEW YORK, }
City and County of New York, } *ss:*

Be it remembered that on this 9th day of December, A. D. 1879, before me, Charles Nettleton, a commissioner for the State of Nevada in New York, personally came before me Alfred Kimber, subscribing witness to the foregoing instrument, to me personally known to be such subscribing witness to the above instrument, who, being by me duly sworn, did depose and say that he resides at New York city, New York; that he is personally acquainted with J. E. Clay-
681 ton and knows him to be the same person described in and who signed, sealed, and executed the foregoing instrument for the uses and purposes therein mentioned, and that he, said Alfred Kimber, subscribed his name as a witness thereto.

ALFRED KIMBER.

Subscribed in my presence and sworn to before me this 9th day of December, A. D. 1879.

In witness whereof I have hereunto set my hand and affixed my official seal.

CHARLES NETTLETON,
Commissioner for Nevada in New York,
No. 117 *Broadway, N. Y. City.*

Recorded, at request of Charles Nettleton, Dec. 22nd, 1879, at 20 min. past nine a. m., in Book B of Miscellany, pp. 208 and 209, Nye county, Nevada, records.

GEORGE ERNEST, *Recorder.*

Henry B. Stanton
to
Franz O. Matthiessen and Lebbeus B. Ward.

In consideration of the sum of five thousand dollars, that being the amount bid therefor and which has been received by me for all the real and personal property of the New Philadelphia Silver Mining Company, —, Henry B. Stanton, receiver of said company, appointed by the supreme court of the State of New York, do hereby sell, assign, transfer, and set over unto Franz O. Matthiessen
682 and Lebbeus B. Ward, they being the purchasers thereof, all the right, title, and interest which the said New Philadelphia Silver Mining Company and which I, as the receiver thereof, have in and to the annexed written instrument; to have and to hold the same, with all the rights and privileges thereto pertaining, by the said Matthiessen and Ward and their heirs, executors, administrators, and assigns forever.

In witness whereof I have hereunto set my hand and seal this sixteenth day of December, 1881.

H. B. STANTON, [SEAL.]
Receiver of the New Philadelphia Silver Mining Company.

Signed, sealed, and delivered in presence of—
CHARLES NETTLETON.
W. E. GILHOOLY.

STATE OF NEW YORK, }
City and County of New York, } *ss:*

Be it remembered that on this seventh day of November, A. D. 1881, before me, Charles Nettleton, a commissioner appointed by the Governor of the State of Nevada to take acknowledgment of deeds in the State of New York to be used and recorded in the State of Nevada, and residing in the city of New York, personally appeared Henry B. Stanton, receiver of the New Philadelphia
683 Silver Mining Company, to me personally known and known to me to be such receiver and to be the same person whose name is subscribed to the foregoing bill of sale as a party thereto and known to me to be the person described in and who executed the foregoing instrument, who duly acknowledged to me that he executed the same as such receiver freely and voluntarily and for the uses and purposes therein mentioned.

In witness whereof I have hereunto set my hand and affixed my official seal, at my office, in the said city of New York, this seventh day of November, A. D. 1881.

[SEAL.] CHARLES NETTLETON,
Commissioner for Nevada in New York.

Recorded, at request of R. Gluyas, Nov. 23, A. D. 1881, at 17 min. past 8 p. m.

M. R. DELANO, *Recorder.*

N. G. Smith
to
New Philadelphia S. M. Co.

Whereas I have this day obtained from J. E. Clayton, att'y for N. S. Trowbridge, of Tybo, Nevada, an option to purchase certain water rights at Hot Creek, Nye county, Nevada, and also certain mining claims, known as the Empire & Richmond, Bullion, Crescent, Bismark, and Dexter mines, in Hot Creek and Argenta mining district-, Nye Co., Nevada; and whereas said option was secured by me for the benefit of the New Philadelphia Silver Mining
684 Co. in case the said company wished to avail themselves of the same: Now, therefore, for and in consideration of the sum of one dollar, the receipt whereof I hereby acknowledge, I hereby give, grant, and yield to the said company the option of purchasing said properties under the said agreement, provided the said Co. indemnify me against loss or expense in the premises, and provided that they faithfully perform all the stipulations of the said agreement.

New York, March 15th, 1879.

WM. G. SMITH.

Recorded, at the request of R. Gluyas, Nov. 23rd, 1881, at 14 min. past 8 p. m.

M. R. DELANO, *Recorder.*

Henry B. Stanton
to
Franz O. Matthiessen and Lebbeus B. Ward.

In consideration of the sum of two thousand dollars, that being the amount bid therefor and which has been received by me for all the real and personal property of the New Philadelphia Silver Mining Company, I, Henry B. Stanton, receiver of said company, appointed by the supreme court of the State of New York, do hereby sell, assign, transfer, and set over unto Franz O. Matthiessen and Lebbeus B. Ward, they being the purchasers thereof, all the right, title, and interest which the said New Philadelphia Silver Mining Company and which I, as the receiver thereof, have in and
685 to the annexed written instrument; to have and to hold the same, with all the rights and privileges thereto pertaining, by the said Matthiessen and Ward and their heirs, executors, administrators, and assigns forever.

In witness whereof I have hereunto set my hand and seal this sixteenth day of September, 1881.

H. B. STANTON,
Receiver of the New Philadelphia Silver Mining Company.

Signed, sealed, and delivered in the presence of—
CHARLES NETTLETON.
WILLIAM E. GILHOOLY.

STATE OF NEW YORK, }
City and County of New York, } ss:

Be it remembered that on this seventh day of November, A. D. 1881, before me, Charles Nettleton, a commissioner appointed by the Governor of the State of Nevada to take acknowledgments of deeds in the State of New York to be used and recorded in the State of Nevada, and residing in the city of New York, personally appeared Henry B. Stanton, receiver of the New Philadelphia Silver Mining Company, to me personally known and known to me to be such receiver and to be the same person whose name is subscribed to the foregoing bill of sale as a party thereto and known to me to be the person described in and who executed the — same as
686 such receiver freely and voluntarily and for the uses and purposes therein mentioned.

In witness whereof I have hereunto set my hand and affixed my official seal, at my office, in the said city of New York, this seventh day of November, A. D. 1881.

CHARLES NETTLETON,
Commissioner for Nevada in New York.

Recorded, at request of R. Gluyas, Nov. 23rd, 1881, at 14 min. past 8 p. m.

M. R. DELANO, *Recorder.*

N. S. Trowbridge
to
J. T. Williams.

This agreement, made and entered into by N. S. Trowbridge, of Tybo, Nye county, Nevada, provides that, in consideration of the sum of one dollar and other valuable considerations, the said Trowbridge agrees to and with Jos. T. Williams, of Hot Creek, Nye county, Nevada, that the terms of a certain agreement made by J. E. Clayton to William G. Smith, of New York city, under date of March 15th, 1879, shall be fulfilled, and that in case said terms of said agreement are not fulfilled, then any moneys which may have been paid to said Williams under said agreement shall be forfeited, and the title of all property conveyed by said Williams to said Trowbridge shall revert to said Williams.

In witness whereof I have this 9th day of June, A. D. 1879, hereunto set my hand and seal.

687 N. S. TROWBRIDGE. [SEAL.]

Witness:
J. STERN.

STATE OF NEVADA, } ss:
County of Nye, }

On this 26th day of June, A. D. one thousand eight hundred and eighty-two, personally appeared before me, George Turin, a notary public in and for the said county of Nye, N. S. Trowbridge, whose name is subscribed to the annexed instrument as the party thereto, personally known to me to be the same person described in and who executed the said annexed instrument as the party thereto, and the said N. S. Trowbridge duly acknowledged to me that he executed the same freely and voluntarily and for the uses and purposes therein mentioned.

In witness whereof I have hereunto set my hand and affixed my official seal the day and year in this certificate first above written.

[SEAL.] GEO. TURIN,
Notary Public.

Recorded, at request of W. N. Granger, June 28th, A. D. 1882, at 30 min. past 11 o'clock a. m.

M. R. DELANO,
Co. Recorder.

STATE OF NEVADA, } ss:
County of Nye, }

I, W. F. Leon, recorder in and for said county of Nye, hereby certify the foregoing to be a true and correct copy of the instruments set forth, power of attorney, as the same appear of record on
688 pp. 138, 180, 269, 270, 318, 315, 316, 317, 342, inclusive, in Book "B" — Miscellany, Nye county records.

The foregoing is all appertaining to the matters set forth, as appear of record in the instruments hereto attached, except a repetition of the option of Clayton to Smith, recorded as referred to in the option hereunto annexed.

In witness whereof I have hereunto affixed my official seal this the 25th day of June, A. D. 1886.

[SEAL.] W. F. LEON,
Co. Recorder.

(Filed Nov. 1, 1886.

T. J. EDWARDS, *Clerk.*

689 PLAINTIFF'S EXHIBIT "Y." July 10th, 1886. T. J. Edwards, Com'r.

Richmond Silver M'g Co.

Notice.

To all whom it may concern:

I, the undersigned, give notice that I have this day located and do hereby claim fifteen hundred feet in length on this mineral-bearing lead or lode, running in a southerly direction from this monument. I also claim three hundred feet in width on each side of this monument, running the whole length of the 1,500 feet, thereby

making a surface location 1,500 feet long and 600 feet wide. I also claim all the rights and privileges granted by the United States and Argenta mining district laws.

This property shall be hereafter known as the Richmond Silver Mining Company, and is a relocation of the Old Dominion Nevada Co.

(Signed) J. D. ERNST.

December 4th, 1878.

Filed and recorded December 4th, 1878.

ALFRED KIMBER,
Argenta Mining District Recorder.

Empire Silver Mining Company.

Notice.

To all *to* whom it may concern:

690 I, the undersigned, give notice that I have this day located and do hereby claim fifteen hundred feet in length on this mineral-bearing lead or lode, running in a northerly direction from this monument. I also claim three hundred feet in width on each side of this monument, running the whole length of the 1,500 ft., thereby making a surface location 1,500 feet long and 600 feet wide. I also claim all the rights and privileges granted by the United States and Argenta mining district laws. This property shall be hereafter known as the Empire Silver Mining Company, and is a relocation of the Old Dominion Company.

December 4th, 1878.

(Signed) JOS. T. WILLIAMS.

Filed for record December 4th, 1878.

ALFRED KIMBER,
Argenta Mining District Recorder.

Crescent Silver Mining Company.

Notice.

To all whom it may concern:

I, the undersigned, give notice that I have this day located and do hereby claim fifteen hundred feet in length on this mineral-bearing lead or lode, running in a northeasterly — 822 feet and southwesterly direction 678 ft. from this monument. I also
691 claim three hundred feet in width on each side of this monument, running the whole length of the 1,500 feet, thereby making a surface location 1,500 feet long and 600 feet wide. I also claim all the rights and privileges granted by the United States and Argenta mining district laws.

This monument is situated near Rattlesnake canyon, Nye Co., Nevada, and is on the extended boundary line lying in a northeasterly direction of United States survey No. 37, post No. 4; thence

to corner post No. 3 of Broadway location; thence in a northwesterly direction 500 feet to a point on the Louden location; thence 678 feet in a northeasterly direction to the location monument of the Crescent Silver Mining Co.

December 16th, 1878.

(Signed) JOS. T. WILLIAMS.

Filed for record December 16th, 1878.

H. ANDRESEN,
Argenta Mining District Deputy Recorder.

Bullion Silver Mining Company.

Notice.

To all whom it may concern:

I, the undersigned, give notice that I have this day located and do hereby claim fifteen hundred feet in length on
692 this mineral-bearing lead or lode, running in a northeasterly direction 500 feet and southwesterly direction 1,000 feet from this monument. I also claim 300 feet in a northwesterly direction and 275 in a southeasterly direction from this monument, running the whole length of the 1,500 feet, thereby making a surface location 1,500 feet long and 575 feet wide. I also claim all the rights and privileges granted by the United States and Argenta mining district laws.

This monument is situated near Rattlesnake canyon, Nye county, Nevada, and is on the extended boundary line lying in northerly direction of United States survey No. 37, post No. 4; thence to corner No. 3 of Broadway location; thence northwest 200 feet to post No. 1 of Crescent location; thence 275 feet in a northwesterly direction to location monument of Bullion Silver Mining Co.

December 16th, 1878.

(Signed) JOS. WILLIAMS.

Filed and recorded Dec. 16th, 1878.

H. ANDRESEN,
Argenta Mining District Deputy Recorder.

Dexter Silver Mining Co.

Notice.

693 To all whom it may concern:

I, the undersigned, give notice that I have this day located and do hereby claim fifteen hundred feet in length on this mineral-bearing lead or lode, running northerly 700 feet and southerly 800 feet from this monument. I also claim 300 feet on each side of this monument, running the whole length of the 1,500 feet, thereby making a surface location of 1,500 feet long and 600 feet wide. I also claim all the rights and privileges granted by the United States and Argenta mining district laws.

This monument is situated near Rattlesnake canyon, Nye Co.,

Nevada, and is on the extended boundary line lying in northeast direction of United States survey No. 37, post No. 4; thence to corner post No. 3, Broadway location; thence northwest to corner post No. 1 of Crescent location; thence northeast 1,500 feet to corner post No. 4 of Crescent location; thence in a southerly direction 400 feet to location monument of Dexter Silver Mining Co.

December 16th, 1878.

(Signed) JOS. WILLIAMS.

Filed and recorded Dec. 16th, 1878.

H. ANDRESEN,
Argenta Mining District Deputy Recorder.

694 Bismark Silver Mining Co.

Notice.

To all whom it may concern:

I, the undersigned, give notice that I have this day located and do hereby claim fifteen hundred feet in length on this mineral-bearing lead or lode, running northerly 750 feet and southerly 750 feet from this monument. I also claim 300 feet in width on each side of this monument, running the whole length of the 1,500 feet, thereby making a surface location 1,500 feet long and 600 feet wide. I also claim all the rights and privileges granted by the United States and Argenta mining district laws. This monument is situated near Rattlesnake canyon, Nye Co., Nevada, and is on the extended boundary line lying in a northeast direction of United States survey No. 37, post No. 4; thence to corner post No. 3 of Broadway location; thence northwest 200 feet to corner post No. 1 of Crescent location; thence northeast 1,000 feet to boundary line of Dexter location; thence in an easterly direction 600 feet to corner post No. 3 of Dexter location; thence in a northeasterly direction 470 feet to location monument of Bismark Silver Mining Co.

December 16th, 1878.

695 (Signed) JOS. WILLIAMS.

Filed and recorded Dec. 16th, 1878.

H. ANDRESEN,
Argenta Mining District Deputy Recorder.

Filed Nov. 1, 1886.

T. J. EDWARDS, *Clerk.*

696 PLAINTIFF'S EXHIBIT Z. July 10, '86. T. J. Edwards, Com'r.

UNITED STATES LAND OFFICE,
EUREKA, NEVADA, *May 16th*, 1886.

Mr. R. Gluyas, Hot Creek, Nevada:

DEAR SIR: In reply to yours of the 14th I will say that there is no record in my office by which I can tell the date on which I received clear list No. 2, which embraces State list No. 24 and the E. ½

of S. E. ¼ of section 33 and W ½ of S. W. ¼ of section 24, t'p 8 N., R. 50 E. The Commissioner's letter which accompanied said list is dated May 10th, 1883, and from that I judge that it was received about the 17th or 18th of the same month. Said clear list is dated May 5th, 1883.

Respectfully, F. H. HINCKLEY, *Register.*

Filed Nov. 1, 1886.

T. J. EDWARDS, *Clerk.*

697 PLAINTIFF'S EXHIBIT A1. July 10, '86. T. J. Edwards, Com'r.

STATE OF NEVADA, } ss:
County of Eureka, }

I, W. S. Beard, county recorder and *ex officio* auditor in and for Eureka county, State of Nevada, do hereby certify that I find the following local item published in the Eureka Daily Sentinel of the issue of Wednesday, May 16th, 1883:

"Personal.—Hon. J. T. Williams, of Hot Creek, Nye county, arrived in town yesterday afternoon."

W. S. BEARD, *Recorder.*

I also certify that the following is — copy of an item printed in the Eureka Evening Leader of Friday, May 18th, 1883:

"Local Jottings.—Senator J. T. Williams returned to his home in Nye county this morning."

W. S. BEARD, *Recorder.*

STATE OF NEVADA, } ss:
County of Eureka, }

I, W. S. Beard, county recorder and *ex officio* county auditor, do hereby certify that the Eureka Daily Sentinel is a newspaper published in the town and county of Eureka, State of Nevada, and was a newspaper published at the same place during the month of May, 1883. I further certify that the Eureka Evening Leader was a news-
698 paper published at the above-mentioned place during the month of May, 1883. I further certify that both of these newspapers were filed in my office as official records, and that the foregoing instruments are true and complete copies of the items as published.

In witness whereof I have hereunto set my hand and affixed my official seal this 3 day of July, 1886.

[SEAL.]

W. S. BEARD,
Recorder and ex Officio Auditor,
Eureka County, Nevada.

(Filed Nov. 6, 1886. T. J. Edwards, clerk.)

PLAINTIFF'S EXHIBIT "B" 1. July 10th, 1886. T. J. Edwards, Com'r.

M. M. Donohue
to
Jos. T. Williams *et al.*

This agreement, made and entered into this 30th day of March, A. D. 1875, between M. M. Donohue, of Hot Creek, Nye county, State of Nevada, the party of the first part, and Joseph T. Williams and his wife, Sophie E. Williams, of the same place, the parties of the second part, witnesseth:

Whereas the said parties of the second part have this day sold and conveyed unto the said party of the first part the following-described real property, to wit, that certain agricultural ranch
699 consisting of about three hundred acres and situated in Hot Creek cañon, county and State aforesaid, commencing at a point in said cañon opposite the Indian Jim mine and extending down said cañon to the fence built across said cañon, about one-fourth of a mile below the upper town of Hot Creek, and embracing all the meadow and agricultural land situated in said cañon between said mine and said cross-fence and having thereon an adobe house, known as the Old Dominion Company's house; and whereas the said parties of the second part are the owners of that certain agricultural and meadow ranch situated in Hot Creek cañon aforesaid, immediately below the above-described premises and extending from said cross-fence to a point three-fourths of a mile below the lower town of Hot Creek; and whereas the said parties of the second part desire sufficient water to properly irrigate that portion of their ranch last above described, which is now inclosed by a fence; and whereas the said parties of the second part desire that the water of Hot creek shall always run and flow without interruption or obstruction from the land first above described to and upon this land last above described for the purpose of irrigating that portion of said
700 land which is now inclosed as aforesaid; and whereas the said party of the first part is the owner of a ditch which conveys the water from the land first above described along the northern side of the land last above described to a point in Hot Creek valley about one mile east of the Blue Jay mill; and whereas the land first above described was leased by the said parties of the second part for the period of one year from the 1st day of March, 1875, to one J. F. Parker by a written instrument dated Oct. 15th, A. D. 1874: Now, therefore, it is hereby understood and agreed by and between the respective parties hereto that the said party of the first part will not in any manner obstruct or divert the water of Hot creek on the land first above described between the first day of April and the first day of September of each year, but will allow it to run and flow as it now does from his land first above described to and upon the land second above described to irrigate that portion of the same that is now inclosed as aforesaid, and to use the water as

it naturally flows from the land first above described to and upon the land second above described to properly irrigate that portion thereof that is inclosed as aforesaid, and to use the water of
701 said ditch for the same purpose during said time; and the said party of the first part also grants unto the said parties of the second part the right to convey in a pipe or pipes laid underground four inches of water from the hot springs at the upper town of Hot Creek to the southeast corner of the land inclosed as aforesaid, which water shall only be used for domestic purposes and to irrigate a garden, and the surplus of water shall be turned into said ditch by the said parties of the second part.

And the said parties of the second part, for and in consideration of the covenants, promises, and agreements on the part of the said party of the first part herein contained, promise, covenant, and agree that they will only use the water flowing from the land first above described to irrigate the land which is inclosed as aforesaid, and will only use the same from April first to September first of each year, except a sufficient amount to irrigate whatever garden they have in cultivation, and in no case to use the water after the first day of October of each year, and that they will use said water in an economical manner and suffer none to run to waste, and will turn the water after they have used the same and also all surplus water into
702 said ditch which conveys the water into said Hot Creek valley.

And the said parties of the second part further agree to sell and convey by good and sufficient deed unto the said party of the first part on or before the 30th day of March, 1876, the land second above described, together with the improvements thereon, provided that the said party of the first part shall pay unto them on or before said day the sum of four thousand U. S. gold coin dollars for said land, and in case the land second above described is surveyed by the U. S. Government previous to the said 30th day of March, A. D. 1876, then the said parties of the second part promise and agree to convey the land second above described to said party of the first part by good and sufficient deed within four weeks after they or either of them shall receive the U. S. Government title thereto, provided the said party of the first part shall pay unto the said parties of the second part the sum of four thousand U. S. gold coin dollars for said land within said four weeks after receiving said title as aforesaid.

And it is hereby understood that in case said party of the first part shall elect to purchase said land as aforesaid, then the said parties of the second part have the right to reserve from said
703 purchase five acres of said land, to be selected by them at the southeast corner of the land inclosed as aforesaid, and to convey in a pipe or pipes laid under-ground the water of the lower spring within said enclosure to said five acres; and it is hereby understood and agreed that in case the said party of the first part shall elect to purchase said land as aforesaid, then he agrees to pay, in addition to said four thousand dollars, whatever sum of money the said parties of the second part may hereafter expend in repair-

ing and building fences on said land, and *and* in case he elects to purchase the same and said land is surveyed as aforesaid, then he agrees to pay, in addition to said four thousand dollars, the Government price of said land.

And — is hereby understood and agreed that the land first above described is sold subject to the aforesaid lease, and that the said party of the first part is to have all the hay coming to the said parties of the second part thereunder.

And it is hereby understood and agreed that in case the said land second above described is surveyed as aforesaid, then the said parties of the second part promise and agree to use reasonable diligence and exertion to procure the Government title thereto, and
704 immediately after the same is procured they shall notify the said party of the first part of that fact, and the said party of the first part shall have at least ten days after said notification to elect to purchase said land as aforesaid; and it is hereby understood and agreed that in case the said party of the first part shall elect to purchase said land according to the terms hereinbefore specified, then the said parties promise and agree to convey not only the title they now have, but the title they may hereafter acquire thereto.

In witness whereof we have hereunto set our hands and seals the day and year first above written.

JOS. T. WILLIAMS. [SEAL.]
SOPHIE E. WILLIAMS. [SEAL.]
M. M. DONOHUE. [SEAL.]

STATE OF NEVADA, } ss:
County of Nye, }

On this thirteenth day of March, A. D. one thousand eight hundred and seventy-five, personally appeared before me, M. B. Howard, a notary public in and for the said Nye county, Joseph T. Williams and Sophie E. Williams, his wife, whose names are subscribed to the annexed instrument as parties thereto, personally known to me to be the same persons described in and who executed the
705 said annexed instrument as parties thereto, who, each of them, acknowledged to me that they, each of them respectively, executed the same freely and voluntarily and for the uses and purposes therein mentioned; and the said Sophie E. Williams, wife of the said Joseph T. Williams, having been by me first made acquainted with the contents of said instrument, acknowledged to me, on examination, apart from and without the hearing of her husband, that she executed the same freely and voluntarily without fear or compulsion or undue influence of her husband, and that she does not wish to retract the execution of the same.

In witness whereof I have hereunto set my hand and affixed my official seal the day and year in this certificate first above written.

M. B. HOWARD,
Notary Public.

[SEAL.]

STATE OF NEVADA, } ss:
County of Nye, }

I, W. F. Leon, recorder in and for said county of Nye, hereby certify the foregoing to be a true and correct copy of the instruments set forth as the same appear of record on pp. 361 to 364, inclusive, Book "A" of Miscellany, Nye county records.

706 In witness whereof I have hereunto set my hand and affixed my official seal this 25th day of June, A. D. 1886.

W. F. LEON,
Co. Recorder.

[SEAL.]

I further certify that the foregoing agreement has not been cancelled of record, but assigned to Matthiessen and Ward on the 11th day of May, A. D. 1882, which assignment was recorded in Book "B" of Miscellany, pp. 345, 347, 348, 349, Nye county, Nevada, records.

In witness whereof I have hereunto set my hand and affixed my official seal as above this 25th day of June, A. D. 1886.

W. F. LEON,
Co. Recorder.

STATE OF NEVADA, } ss:
County of Nye, }

On this thirtieth day of March, A. D. one thousand eight hundred and seventy-five, personally appeared before me, M. B. Howard, a notary public in and for the county of Nye aforesaid, M. M. Donohue, whose name is subscribed to the annexed instrument as a party thereto, personally known to me to be the person described

707 in and who executed the said annexed instrument as a party thereto, and who duly acknowledged to me that he executed the same freely and voluntarily and for the uses and purposes therein mentioned.

In witness whereof I have hereunto set my hand and affixed my official seal the day and year in this certificate first above written.

M. B. HOWARD,
Notary Public.

[SEAL.]

Recorded, at request of Geor. R. Williams, March 30th, A. D. 1875, at 55 min. past 3 p. m.

JAS. A. SERVICE, *Recorder.*

Agreement in Book "A," pages 361 to 364, inclusive, Miscellany, Nye Co., Nevada, records. This last page of the instrument was inadvertently put after the certificate. This is a true — of the last page, as witness my seal as above.

W. F. LEON, *Co. Rec.*

Filed Nov. 1, 1886.

T. J. EDWARDS, *Clerk.*

708 *Def't's Offer of Ex.* 1 (*Nevada*).

CARSON, *May* 10*th*, 1886.

Present: Mr. Coffin, U. S. attorney, for complainant.

Present: T. W. Healy, attorney for defendant, all notices being expressly waived.

Counsel for defendant now offered in evidence certified copy of bond of J. T. Williams to N. S. Trowbridge and extension of same bond signed by said Williams; also an option given by J. E. Clayton for N. S. Trowbridge to Wm. G. Smith to purchase water right and mill site at Hot Creek, Nevada, and Empire and Richmond mines, near Old Dominion cañon, and Bismark, Dexter, Crescent, and Bullion mines, at Argenta; also agreement between said Clayton and said Smith concerning the property mentioned in said option; also an agreement between said Trowbridge and J. T. Williams concerning said option and the forfeiture of moneys paid thereunder.

To which testimony Mr. Coffin objected on the ground that *they*
are incompetent, irrelevant, and immaterial. The Govern-
709 ment is not a party to any of said documents and never had any notice of their contents or of the agreements or facts therein contained; that they are not pertinent to the issues in the case. They throw no light upon the question of any fraud committed on the Government or upon any inadvertence or mistake on the part of any of its officers, agents, servants, clerks, or employés.

Said documents are hereto annexed and marked Defendant's Exhibit No. 1.

The further taking of testimony was then adjourned until further notice.

T. J. EDWARDS,
Commissioner.

Testimony of Def't (*Nevada*).

SATURDAY, *May* 29, 1886.

Pursuant to notice, the taking of defendant's testimony was resumed this day, T. Coffin and J. D. Torreyson appearing as solicitors for complainant; T. W. Healy, solicitor for defendant.

JOS. T. WILLIAMS, the defendant in said cause, being first duly sworn, on oath deposes and says:

My name is Joseph T. Williams; am the defendant in this
710 action.

Defendant's Exhibit No. 1 is shown witness, who identifies the same as being a bond from Williams to Trowbridge for the sale of six mines, mill site, and water right. Said mines are known and recorded as the Richmond, Empire, Crescent, Bullion, Dexter, and Bismark.

(Counsel for complainant objects to any oral explanations of the

bond introduced in evidence; that the bond speaks for itself and is the best evidence of what it contains.)

Witness says the next paper in Exhibit No. 1 is an extension of the time of the bond for the period of thirty days. The next paper is an agreement of J. E. Clayton with Wm. G. Smith, of New York city. The next paper is also an agreement of J. E. Clayton with Wm. G. Smith. The next paper is an agreement between N. S. Trowbridge and J. T. Williams.

Defendant's counsel now introduces in evidence certified copies of option from Wm. G. Smith to the New Phila. Silver Mining Company to purchase certain mines and water rights secured for
711 the benefit of the New Phil. S. M. Co. and yielding to said company the option of purchase; agreement between J. E. Clayton and Wm. G. Smith to give Smith the right to purchase option, and a letter from J. E. Clayton to Jos. T. Williams, which are marked and designated as Defendant's Exhibit No. 2.

(Complainant's solicitors object to the admission of said Ex. No. 2 on the ground that it is irrelevant, immaterial, and incompetent. The Goverment is not a party to any of said documents and never had any notice of their contents or of the agreement or facts therein contained; that they are not pertinent to any issue in the case. They throw no light upon the question of any fraud committed upon the Government, as alleged in its bill of complaint herein, or upon any inadvertence or mistake on the part of any of its officers, agents, servants, clerks, or employés; that said documents are copies and not the best evidence; that the copies are not authenticated by any person having authority to authenticate them; that the doc-
712 uments, and especially the letter, are in the nature of hearsay.)

Defendant's counsel now offers in evidence a report of the New Phila. S. M. Co. for the year 1879, including report of J. E. Clayton.

(Same objection by complainant.)

Said report is hereto annexed and marked Def't's Ex. No. 3.

Witness says: I don't know Wm. G. Smith. I am informed that he was the treasurer of the New Philadelphia Silver Mining Company. I have seen papers signed by him as treasurer.

(Plaintiff objects to this whole line of testimony upon the same grounds as stated in objections to defendant's exhibits Nos. one and two.)

Witness says: I have known J. E. Clayton for 25 years. He was general superintendent, agent, and manager of said New Phila. S. M. Co.

Q. Did you bond the mines named in the bond, together with a mill site and water rights, to N. S. Trowbridge?

(Plaintiff objects to any oral explanations of any written instruments offered in evidence. The instruments themselves are
713 the best and only evidence of their contents and effect.)

A. I did, and extended the time of the bond thirty days.

Q. To whom did Trowbridge give an option?

A. I never knew anything about any options until I saw those papers returned from New York.

Q. Do you know in whose interest those options and agreements were made and who was expected to be the purchaser of the said mines, water rights, and mill site?

A. Mr. Trowbridge was acting in the interest of Mr. Clayton, who was acting for the New Phila. S. M. Co. under directions of Mr. Clayton, and Mr. Clayton himself, who was the agent and superintendent of the New Phil. M'g Co., informed me the papers were made in the interest of the New Phila. M'g Co., and that the New Phila. M. Co. was to be the purchaser of this property named in the bond and deeds.

Q. Relate what you know about this controversy.

A. I believe it was in the fall of 1878. Professor Clayton visited Hot Creek; examined mines belonging to myself and also to the New Phila. S. M. Co. He made a report for said mining company and advised them that I owned valuable mines in the
714 district. Soon afterward he was employed as agent and superintendent of the New Phila. S. M. Co. By his directions, through Mr. Trowbridge, they bonded six mines, certain water rights, and mill site, as described, for the sum of twenty-five thousand dollars on the terms and conditions named in these bonds. Some time later Mr. Trowbridge requested me to extend the period of the bond, at the same time giving me an agreement that certain bonds and papers given between Wm. G. Smith and J. E. Clayton should be fulfilled, and in case they were not these deeds and property and any moneys which had been paid should revert back to me. Before the extension of this bond had expired Clayton wrote me from New York telling me that mining men in New York were skeptical of mining titles, and requested me to proceed with on the bonded mines and prepare them for U. S. patents, telling me that he would reimburse me for labor and money expended in getting these patents beyond protest in the local land office at Eureka, Nevada. I proceeded with this work as directed. In the mean-
715 time Mr. Clayton, who was the agent of said company, telegraphed me through Mr. Trowbridge, who was acting for Mr. Clayton and said company, to meet Mr. Clayton, who was the agent of said company, at Eureka, Nevada. At Mr. Trowbridge's solicit-ion and request I got on the stage with Mr. Trowbridge and went to Eureka and met Mr. Clayton. Mr. Clayton informed me that he had purchased machinery in New York for the erection of a mill; that he was desirous of proceeding with the work and the erection of this mill and requested me to give them a deed for a mill site and a water right, which I hesitated to do. He assured me that the terms of these bonds and contracts should be complied with; that as soon as I got my patents beyond a protest in the land office at Eureka he would pay me the balance of the $25,000, as agreed upon, in these bonds, which balance would be $20,000 in money, together with 5,000 shares of stock in said company—New Phila. S.

M. Co. They paid me $5,000 on this contract on the delivery of the deed to the mill site and water right.

716 I proceeded with my work in getting my patents beyond a protest in the local land office at Eureka, which I did in due course of time, and notified Mr. Clayton, agent of the company, that I had complied with my part of the contract, and demanded a compliance on their part of our contracts and agreements. Their agent asked me if I would not go ahead and get the patents perfected in Washington, as the company would like to have the patents. I wrote to my lawyer in Washington and requested him to have my patents taken up and expedited. He did so, and the patents were returned to the local land office at Eureka for me. I again presented the matter to the superintendent or agent and informed him that I was ready to deliver the patents to this mining property and make deeds, as we had agreed upon in our agreements, and requested his company to comply with their part of the contract. Mr. Clayton informed me that he knew that I had complied with my part of the contract, and the company ought to pay me or settle with

717 me according to our agreements; that he had no money to pay off the debts of the company; that the company was trying to swindle one another back in New York; that he would go East and try and have this company settle with me and pay their debts. He went East and did not return to Hot Creek any more. In the meantime parties whom he had left in Hot Creek approached me and made me propositions that if I would make them clean deeds to the mining property I could have $15,000. Afterwards they offered me $10,000, which I refused to take. The company soon afterward got into litigation among themselves. Their agent, Mr. Gluyas, left in charge by Mr. Clayton, promised me that as soon as this company was through their own troubles in the East among themselves that they would do what was right with me—make a settlement with me; that he knew I was right; that he would resign his position before he would do anything against me or my interests. Soon afterwards he professed friendship for me again, and proposed to give me $10,000 to settle it. He then offered me $500.00 if I would give them a

718 new bond or contract—that is, the purchasers under the receiver's sale, Matthiessen & Wood—giving them the option to purchase the property within thirty days. I informed him that I considered my bonds and contracts with the old company binding, and that I would have my rights under that contract, and that I was willing to submit my rights to arbitration before any three good business men or district judges in the State, which they refused to do. I have always notified them and do now that I am willing to comply with my part of the contract as stipulated in those bonds and papers and subsequent agreements. I will state that I used the larger portion of this $5,000 that I received for the mill site and water right in the procurement of the patents for these mines at the request of Mr. Clayton, agent of the New Phila. S. M. Company, which money they have never repaid or returned to me.

Q. Are the mines you speak of the ones named in the bond and

known as the Richmond, Empire, Crescent, Bullion, Dexter, and Bismark?

A. Yes.

719 Q. Were they valuable mines?

A. I believe the- are.

Q. Was there ever ore taken out—valuable ore; and, if so, to what value?

A. I cannot state the number of tons of ore taken out. Perhaps $70,000 or more in bullion were realized from them.

Q. The property you bonded was mill site, water right, and those mines?

A. Yes, sir; as named in those bonds.

Q. Was part of the consideration to be paid 5,000 shares of the capital stock of the New Phila. S. M. Co?

A. Yes, sir.

(It is understood that plaintiff's objections heretofore made go to all the testimony of the witness Williams.)

Q. It is alleged in the complaint herein that the words "mill site," written in pencil, were erased by fraud by some one in the interest of Mr. Williams. Did you erase or did you cause anybody to erase those words "mill site?"

A. I never did.

Q. Do you know of your own knowledge whether any such erasure was made?

A. I do not.

720 Q. When did you first hear of such erasure being made?

A. I think it was about a year after the land had been listed to the State of Nevada?

Q. Then, of your own knowledge, you don't know that the words "mill site" were ever written on list No. 24 or erased therefrom?

A. No.

Q. Why did you cancel desert-land entry No. 158?

A. For the reason that I could not get water on the ground in sufficient quantity to reclaim it and to make the required oath to prove up, and for the further reason that when I bonded this mill site and water right it was on my desert-land entry, which I explained fully to Mr. Clayton, agent of the New Phila. M'g Co., and I also explained it to Mr. Trowbridge, who was acting for Mr. Clayton, and it was understood that I was to go on and complete my title. This was so understood at the time I bonded the property and before I made the deed of July 26, 1879. When I found that I could not get sufficient water to reclaim this land, and the three years having nearly expired in which I understood I had to

721 make these proofs, I went to Mr. Gluyas, who claimed to be the agent of the New Phila. M'g Company, and stated the situation to him and notified him that if the New Phila. M. Co. or their successors would guaranty me in my rights under my former deeds and contracts with the New Phila. M. Co.'s agents, and would guaranty me against any damages to the New Phila. M'g Co. for non-fulfillment of contract on my part in securing Government title

to this mill-site ground, I would cancel my desert-land entry and allow them to take up the tile and complete it themselves. I understood that he telegraphed to Matthiessen & Ward, stating my proposition. They returned him a telegram, which he showed to me, signed by Matthiessen, asking me to cancel my desert-land entry without stipulation, which I refused to do unless he gave me the guaranties against damages, as above stated, which Gluyas refused to do. I went to Eureka, laid my case before W. W. Bishop, who, I was told, was a land lawyer, and stated these facts to him as above related. Mr. Bishop advised me to cancel my desert-land
722 entry and file an application through the State of Nevada to purchase the same. I then asked him to make out the proper papers and employed him to attend to the business for me, which he proceeded to do through the State land office.

(Complainant objected to all the foregoing testimony on the ground that it is incompetent and hearsay so far as relates to statements or advice of Bishop and so far as relates to any letters or telegrams or information concerning Matthiessen & Ward or either of them.)

Q. Was it not impossible for you to get the water on the land in sufficient quantity to comply with the law?

A. It was at that time, for the reason that the stream which I contemplated bringing the water from had quit running and was dry, for the reason that we had had two or three dry years in succession. There was not sufficient snow in the mountains to support the springs and keep up the supply of water.

Q. Did you not endeavor to procure the title to this land from the State, so as to have it in your power to comply with your
723 contract with the New Phila. M'g Co.'s agents, as evidenced and stipulated by the exhibits in evidence, upon the fulfillment of their part of the contract?

A. I did.

Q. Were you not always and are you not now ready and willing to make deeds to the mines, water rights, and mill site upon the payment of the consideration named, to wit, $20,000 money and 5,000 shares of the capital stock of the New Phila. S. M. Co. and the money expended in procuring the patents in conformity with subsequent contracts and agreements?

A. Yes.

Q. Did you always hold yourself ready to make the title upon the payment of the stipulated consideration?

A. Yes.

Q. Did this New Phila. Co. comply with its contracts made with you through its agents?

A. They have not.

Q. Do you know why it is that the parties in interest oppose your obtaining title to the ground when they expect to darrain their title through you?

(Objected to by plaintiff upon the ground that no party in interest is making any opposition to his title in this suit ex-
724 cept the Government, which is seeking to set aside a certifi-

cation of lands to the State of Nevada made through fraud, inadvertence, and mistake, as appears from the bill of complaint herein. The question is immaterial, incompetent, and irrelevant to any issue in the case.)

A. For the purpose of levying blackmail against me through the courts and to defraud me out of my rights under my bonds and contracts with the New Phila. M'g Co.

(Plaintiff moves to — out the above answer upon the ground that it is impertinent and scandalous and suggests that this court is an instrument and agent in the levying of blackmail, to which the Government is also a party.)

Q. When you say for the purpose of levying blackmail through the courts, do you wish to be understood to imply that this honorable court can be used as in instrument for blackmail or to imply any disrespect to the Government, which is a party to this suit?

A. I mean no disrespect or insinuation, either to this honorable court or to the Government of the United States. I have
725 the highest respect for this honorable court and the Government.

Q. What did you mean by your answer that they intended to levy blackmail through the courts?

A. I meant that Mr. Gluyas, the agent of Matthiessen & Ward, has openly boasted, time and again, that his company was rich and had influence in Washington, and that they would annoy me with lawsuits and break me up and eventually get what I had; that it was only a matter of time The- have succeeded by falsehood and misrepresentation in bringing several suits against me, to my loss and detriment, and caused pecuniary disadvantages to myself and family.

(Plaintiff moves to strike out the latter portion of the answer upon the ground that it is impertinent and scandalous and not responsive to *to* the question, and moves to strike out the whole of the answer as being irrelevant to any issue in the case.)

Q. How many lawsuits have you now pending over this land?

(Question objected to by pl'ff upon the same grounds as last above stated.)

726 A. Two, on this particular tract of land; besides, they have annoyed me and kept me from procuring title to my homestead for the last three years.

(Pl'ff moves to strike out the last portion of the answer on the ground that it is not responsive to the question.)

Q. Did not Gluyas take an active part in preventing you from proving up your homestead, which proceeding lasted eight weeks, at the U. S. land office, Eureka, Nevada?

(Objected to on the ground that it is incompetent, irrelevant, and immaterial and not pertinent to any issue in the case.)

A. He was instrumental in getting the case sent back from Washington, which I had won three times, for taking additional testimony. He procured this rehearing by procuring false affidavits, which he sent to Washington for that purpose. The taking of this additional testimony lasted about eight weeks.

Q. How long have you used the water of Hot creek for irrigating purposes? I mean the water subject to the water rights named in the complaint.

727 (Pl'ff objects on the same grounds as before.)

A. I have used it off and on for nearly twenty years; have had undisputed possession of it—me and my associates.

Here the further taking of the testimony was continued until Monday, the 31st of May, 1886, at 9 o'clock a. m.

MONDAY, *May* 31*st*, 1886.

Same counsel present.

The witness, JOSEPH T. WILLIAMS, the defendant, was recalled, and further testified as follows, to wit:

Q. Is the ditch, as represented on Pl'ff's Ex. A, running from the corner of the meadow to the mill site, one continuous ditch?

(Objected to by plaintiff on the ground that it is incompetent, irrelevant, and immaterial and not tending to prove any issue in the case.)

A. No; it is a natural stream down to where it is marked "quarter corner" on the exhibit, and then there was a small ditch cut from there to the mill site in the summer of 1879 or of 1880 for
728 the purpose of carrying water to the brick kiln and for the purpose of making mortar for the construction of this mill. It is a small ditch—four or five hundred yards long. I can take a plow and horse and build this ditch for ten dollars or less. It has never been used for the last five or six years. It has never been used for any other purpose, except that I used it for about a week in irrigating some land that I had plowed and sowed in wheat near the mill site now in controversy. The water through the ditch has never been used for any other purpose except as above stated.

Q. Who made the survey of the mill site?

A. I believe Prof. Clayton made it. Mr. Geo. Ernst, U. S. dep't mineral surveyor, made the survey for the patent for the mill site.

Q. What time did he do it?

(Objected to by pl'ff that the testimony is incompetent, immaterial, and irrelevant, not tending to prove any issue in the case; and, further, that the record of the survey is the best evidence of what
729 it purports to be, and the appointment of Mr. Ernst is the best evidence of the official position which he occupied, if he did occupy any.)

A. To the best of my recollection it was after these lists of said

land was listed to the State of Nevada by the United States. The records will show. I don't remember positively the date.

Q. Do the lines of mill site as surveyed by Mr. Ernst conform to those surveyed by Mr. Clayton?

(Objected to by pl'ff on the ground that the surveys themselves are the best evidence.)

A. No.

Q. Did not the lines of the mill site as originally selected by Mr. Clayton lie wholly within the E. ½ of the S. E. ¼ of sec. 33?

A. It did, to the best of my knowledge. The original survey did not cross the line between sections 33 & 34.

Q. Was not the consideration in part for the extension of the time of the bond five thousand shares of the capital stock of the New Phila. S. M. Co., and also part of the consideration for procuring patent for the mines named therein?

(Same objection by complainant.)

730 A. It was a part of the consideration under a subsequent agreement, as explained in this letter from Clayton, agent of said mining company, to me, as contained in Def'ts Ex. No. 2.

Q. It is alleged in the bill of complaint that the value of the quartz mill erected on the land in controversy is $55,000 or thereabouts. What is the value of that mill?

(Objected to by plaintiff upon the ground that the value of the mill is fixed by the pleadings, it being alleged in the bill and not denied in the answer.)

A. I think I could con-truct a better mill for $20,000. I don't think this mill could be sold for $5,000.

Q. Can you produce the originals of the certified copies of your exhibits introduced in evidence?

A. I cannot; I have not got them.

Q. Did you convey a piece of land to Mr. H. B. Campbell? And, if so, explain the circumstances under which the conveyauce was made.

A. I did. In the summer of 1875 I understood the Government was going to survey the lands at Hot Creek; and, knowing
731 that I had more land than the Government would allow me to buy from the Government, I informed Mr. Campbell of that fact, and told him I was going to file a homestead on the land where I lived and cultivated, and that I would sell him the agricultural land east from my house, including the arable lands and meadows commencing fifty feet from my house and running down the valley east; house marked on map "shanty." He told me he would take the property and give me what my improvements were worth. He went and got a notary public who was living there at Hot Creek, and he drew a deed from me and my wife to H. B. Campbell, I think, for 160 acres of land. In describing the land in this deed the notary public, as I understand by the deeds, described the lands as running 250 rods south, when it should have been de-

scribed, according to our understanding—Campbell and myself—as running 250 rods easterly, covering the arable or agricultural lands in the valley easterly or southeasterly from my house. The description was a mistake. Campbell never claimed, held, or took
732 possession of the ground which is in controversy here. He afterward applied for and procured title to other and different ground.

Our attention was afterwards called to the error in the description, and the error was corrected by Campbell's reconveying the land to me by deed. Campbell has not the possession thereof and never did have. There are no improvements on this land except the mill and the improvements connected therewith and never have been. No portion of it was ever inclosed or cultivated. The land I refer to above as being in controversy is that portion of the land described in the Campbell deed and on the map, Def'ts Ex. A, in blue lines lying below—south of the middle line of sections 33 & 34. I did not know of the mistake in the Campbell deed until July 21, 1885.

(Pl'ff objects to the foregoing answer on the ground that all conversations between Williams and Campbell are incompetent, and that the deeds themselves are the best evidence of their contents and of what was deeded by them.)

733 When I abandoned the desert-land entry and applied to have the State select the land it was my intention to comply with my contract with the New Phila. Co. and convey the land to that company upon payment of the consideration, and notified Mr. Gluyas, agent of the company, to that effect.

Q. Did you ever authorize or procure any person to erase the words "mill site" which are alleged to have been entered on the margin of list 24?

(Objected to by pl'ff on the ground that the question has already been asked and fully answered.)

A. I never did.

Q. Did the State of Nevada or any of its officers, agents, or attorneys, with your knowledge or consent or by your procurement, ever erase the words "mill site" alleged to have been written on the margin of list No. 24?

(Objected to by pl'ff upon the ground that it is not alleged in any of the pleadings that the State, by any of its officers or agents, had anything to do with the erasure or any knowledge of it.)

A. No, sir; they never did.

Q. Did you or any one acting for you, with your knowl-
734 edge or consent, ever represent to the plaintiff or its officers or clerks that there was no mill-site contest or application for the ground in question?

A. No, sir.

Q. Did you or any one representing you conceal or attempt to conceal the knowledge of that fact?

A. No, sir; never.

Q. Did the State of Nevada, through its officers, agents, or attorneys, to your knowledge or with your consent, ever represent to the plaintiff or its officers or clerks that there was no contest or adverse application for the ground in question?

(Same objection as before as to the State of Nevada.)

A. No; never.

Q. Did the State of Nevada or any of its officers or agents or attorneys, to your knowledge or with your consent, conceal the fact from the plaintiff, its officers or clerks, that an adverse application was made for the land in question.

(Same objection as to the State; and, further, there is no suggestion in any pleading or evidence in the case that the State had any knowledge of the fact.)

A. No.

735 All of the foregoing testimony of witness Williams was objected to by plaintiff upon the ground that it is incompetent, irrelevant, and immaterial and pertinent to no issue in the case except the testimony relative to the erasure of the words "mill site" upon the margin of list No. 24.

End of direct examination.

Cross-examination:

I have lived at Hot Creek ever since May, 1866. When the quartz mill was built I was at my home, about a half a mile from the mill, and saw it in process of erection from day to day. The mill was built, to the best of my recollection, in the fall of 1879, by the New Phila. S. M. Co. I presume that the New Phila. M. Co. and its successors under the sheriff's deed have been in the possession of the mill and mill site ever since 1879, as they have had a Chinaman sleeping there nights; also a man named Gluyas, who claimed to be agent of the New Phila. M. Co. and of Matthiessen & Ward, its successors; lived about three-quarters of a mile distant. I think
736 Gluyas had charge of the mill and control over it. I have had knowledge of all these facts all these years since 1879.

Q. Did you disclose these facts to the State or any of its officers or agents when you made application to the State to purchase the lands in controversy?

(Objected to by def't as not in cross-examination and as immaterial and irrelevant. The State is not a party, and there is no charge of fraud upon the State, and there is no jurisdiction to try that question. The State is able to take care of its own contracts. Furthermore, the State having title to the land, Mr. Williams had the right to purchase it, and if the land was occupied rightfully the occupant had a preferred right to buy under the laws of the State and six months' time in which to show that preference; also the occupation, whatever it was, and improvements were subject and subordi

nate to Mr. Williams' agreement to obtain the title in fee, and any attempt to hold it against him was a fraud upon that contract.)

737 A. No; for the reason that at the time I made the deeds to the New Phila. M. Co. it was understood with the agents of this company and myself that I was to proceed and complete the title to this mill-site land from the Government; that in part consideration I was to receive 5,000 shares of the stock of said New Phila. M'g Company.

Q. With what agent or agents did you have this understanding?

A. With Prof. J. E. Clayton, who was agent and superintendent of the New Phila. M. Co. at that time.

Q. Is it not a fact that the New Phila. M. Co. had become insolvent and gone out of existence and its property been sold by the sheriff before you made application to the State to purchase the land in controversy?

(Def't objects that it is immaterial whether that be so or not. The successor to the interest of the New Phila. M. Co., claiming the benefit of its contract, must carry out the stipulations of the contract on its part.)

A. I know nothing of my own knowledge about their acts of insolvency.

Q. At what date did the New Phila. M. Co. cease active operations at Hot Creek?

738 A. They ceased working at Hot Creek late in the fall of 1879, to the best of my recollection.

Q. At what date was the company's property sold by the sheriff of Nye county—about what date?

A. It must have been about 1880 or 1881. I believe it was about that time.

Q. When you applied to purchase the lands in controversy from the State did the State or its officers or agents have knowledge of the fact that there was a quartz mill on the land?

(Objected to by def't as not being in cross-examination, and that it is immaterial, the State not being a party and there being no issue to support it.)

A. I have no way of knowing whether they did or not.

Q. Did you have knowledge of this fact at that time?

A. Yes; and supposed that I was a party in interest, having 5,000 shares of the stock in the quartz mill and company, as their agent. Gluyas informed me that as soon as they settled their troubles in the East among themselves they would do the thing that was right and settle with me.

739 (Plaintiff moves to strike out the latter part of the answer as not responsive to the question.)

Q. Did the State select the land in controversy at your instance and upon your application?

A. I suppose they did.

Q. Did you conceal the fact of your application to the State for the lands in controversy from Matthiessen & Ward and their agent for more than six months after the certification of the land to the State?

A. No; I never made any concealments to anybody. I made my application through the State and U. S. land offices in the usual way, and notified Mr. Richard Gluyas, who claimed to be Matthiessen & Ward's agent, that I intended to cancel my desert-land entry and make application through the State land office to complete my title to this mill land in controversy, and intended to carry out my part of the contract and stipulation with the New Phila. M. Co. unless they accepted of my proposition to guaranty me in my rights under the bonds, as testified heretofore.

Q. After you had applied to the State to purchase the lands in controversy did you tell Mr. Richard Gluyas, agent of Mat-
740 thiessen & Ward, that you had not so applied, but that you intended to or thought of doing so?

A. No. After I had prepared my papers for cancellation of my desert-land entry, but before forwarding them, Mr. Gluyas met me at my gate one evening and asked me if I had cancelled my State desert-land entry. I said to him, No; but I intended to comply with my contracts and agreements with the New Phila. M. Co., and expected them to do the same thing with me. These papers were prepared at Eureka by Bishop.

Q. You say you stipulated that your application for lands to the State should be forwarded to Harry Day, at Carson City, at a certain time?

A. Yes, sir.

Q. At what time was it *it* be forwarded to Harry Day?

A. In a few days, when I could communicate with him. I think it was to be held about two or three days at Eureka.

Q. Did you not prepare your relinquishment of your desert-land entry on May 20, 1882, and file it the same day in the land office at Eureka?

741 A. I could not say whether it was filed in Eureka or not. It was not my instruction or understanding. My understanding was that the papers were to be forwarded to the State land office, and the papers returned to the U. S. local land office at Eureka; that my State application was to — filed in Eureka land office immediately after my desert-land entry cancellation was made.

Q. Do you not know, and did you not know at that time, that an application to purchase land from the State must be filed in the State land office at Carson and not in the U. S. local land office at Eureka?

A. Certainly; that was our purpose in sending these papers to the State land office.

Q. Did you not, on May 20th, 1882, the day on which you relinquished your desert-land entry at Eureka, make out an application to the State to purchase the lands in controversy, sign it yourself, and on the same day forward it or have it forwarded to the State land office in Carson?

A. I made out the same papers on the same day and gave them to my attorney, Bishop, to protect my rights.

742 Q. Do you not know that your relinquishment of your desert-land entry was filed in the land office at Eureka on the day you signed it?

A. I never knew that it was.

Q. What time in the day did you go to Bishop to have this done?

A. I consulted him in his office in the afternoon. He advised me what to do in the premises and agreed to complete the papers the next morning. I wanted to return home early next morning, and went to his residence, as it was before office hours, woke him up, and found him undressed, and he prepared my papers. I paid him the necessary fees and told him I would write to Harry Day, and for him to forward the papers and Harry Day would attend to this business for me at Carson City. I returned home same day, and never heard anything about this land matter any further until I was informed that the land had been listed to the State of Nevada, which was ten or twelve days or two weeks after the list-

743 ing to the State. The notice of listing to the State was from Mr. Preble, the State land register.

Q. After you had signed the written relinquishment of your desert-land entry and also signed your application to the State to purchase the lands in controversy and delivered them to your attorney to be forwarded as above stated, and after your return to Hot Creek, did you not tell Mr. Richard Gluyas, agent of Matthiessen and Ward, that you had not relinquished the desert-land entry and had not applied to the State for the purchase of the land, but intended to do so or thought of doing so?

Q. No. Immediately on my return to Hot Creek Mr. Gluyas asked me if I had filed certain applications. I said no, but I intended to, and that I intended to comply with my part of the bonds and contracts with the New Phila. M'g Co. and expected them to do the same thing with me. At that time I believed that my attorney had not filed these papers, either in the State or local land office at Eureka.

Q. What certain applications did Mr. Gluyas ask you about?

A. My recollection is that it was the State application for

744 these lands which I had before informed him I had intended to make.

Q. Did you ever agree with Matthiessen & Ward to relinquish your desert-land entry in their favor and allow them to complete the title to the mill site?

(Objected to by defendant as not being in cross-examination and as being immaterial.)

A. No; I proposed a relinquishment in their favor, but they did not accept my terms.

Q. What were your terms?

A. That they should protect my rights under the contracts and bonds contained in def't's Exhibits 1 & 2 and guaranty me against

damages for not completing my title to the desert land, including the mill site.

Q. After you had relinquished your desert-land entry did you ever inform Matthiessen & Ward or their agent of that fact; and, if so, when?

A. No, sir; I never had anything more to do with them.

The further taking of the testimony was continued until June 1st, 1886, at 9 o'clock a. m.

T. J. EDWARDS, *Com'r.*

745 TUESDAY, *June* 1, 1886.

Same counsel present.

The witness WILLIAMS now testifies as follows on cross-examination:

Q. Did you ever tell Matthiessen & Ward or their agent that the land in controversy had been certified to the State and that you had applied for it?

A. No, sir.

Q. Have you any pecuniary investment in this tract of land?

(Objected to by def't as being irrelevant and immaterial and not pertinent to any issue in the case. It does not make any difference whether he has expended a million dollars on the land or not a cent.)

A. I consider that I have. I have spent some money clearing sage brush off this land. I have also plowed and cultivated several acres and sowed it in wheat; made some expenditures in trying to get water on the land to reclaim it as a desert-land entry. I consider that under my contracts with the New Phila. S. M. Co. that I am entitled to 5,000 shares of its stock. I spent a considerable amount of money in fees to the Government of the United
746 States and to the State of Nevada in my contracts for this land. I consider that the New Phila. M. Co. owes me $20,000 on the bonds and the 5,000 shares of stock. I was bound by said contracts to complete these titles in fee to said lands in dispute or I would suffer a large pecuniary loss—was liable to—besides forfeiting that part of my contract with the agents of the New Phila. M. Co.

Q. If there are any improvements placed upon the land in controversy by you since your deed to the New Phila. M. Co. of date July 26th, 1879, state what they are.

A. Well, I grubbed the sage brush off of about two acres of the W. ½ of the S. W. ¼ of sec. 34, had it plowed and broke up, and sowed in wheat. I plowed and broke up about an acre and a half or two acres in another place, a part of mill-site survey, and sowed it in wheat; that is all.

Q. When did you grub the two acres of sage brush?

A. I think it was in the spring of 1882. It was before I cancelled my desert-land entry and plowed the acre and a half near the
747 mill about the same time. Since my deed of July 26, 1879, to the New Phila. M. Co. I have made no improvements on

the land deeded to it. I got no crop off the land when I plowed and sowed it because of scarcity of water that year, and for that reason I cancelled my desert-land entry and made a State application for said lands.

Q. Do you know Mr. Lebbeus B. Ward, of the firm of Matthiessen & Ward?

A. I have no personal acquaintance with him. I met him in Governor Abbett's office, in New York city, and had a few minutes' conversation with him; that is all I know of Mr. Ward. I think this was about the middle of December, 1883.

Q. At the time of your meeting Mr. Ward in Mr. Abbett's office and during the conversation with him you have referred to did you know that the lands in controversy had been listed to the State?

A. No, sir.

Q. Did you propose to compromise this matter in that conversation for $5,000?

A. No, sir.

Q. Did you propose a compromise of $4,000?

A. No, sir; I did propose a compromise or submit the mat-
748 ter to arbitration. I proposed to Mr. Ward and Mr. Abbett, his attorney, that they should give up all the agricultural lands at Hot Creek and I would give up my claims against the New Phila. M. Co. and stop all litigation, and that they could go on with their milling business, or they could take the mines and the whole business of the district by paying me $5,000 additional or something to that effect and we would have no more trouble or litigation, which they refused to accept. This is the substance of that conversation, as near as I remember at the presence time.

Q. Did you at that conversation inform Mr. Ward or Mr. Abbett that the lands in controversy had been certified to the State and that you had applied for them?

A. I did not.

Q. Why not?

A. For the reason that they were as well informed as I was as to the status of that land.

Q. How do you know they were?

A. Mr. Ward and Mr. Abbett both informed me that they knew that I had made the State application for the land and had
749 cancelled my desert-land entry.

Q. Did Ward and Abbett know at that time that the lands had been certified to the State?

A. I don't know whether they did or not.

Q. Did you inform them?

A. I did not.

Q. Why not?

A. I had never been notified of such certification myself.

Q. Were you not notified by Preble within two or three weeks after the certification that the lands had been certified to the State?

A. Yes, sir; this was after my interview with Mr. Ward.

Q. The lands were certified to the State in May, 1883; you were notified within two or three weeks thereafter; your conversation

with Mr. Ward was about the middle of December, 1883. Now, how can it be that you did not know of the certification when you had your conversation with Mr. Ward?

A. Well, I am mistaken as to being notified. The first notification I ever had about this matter was after I left New York and went down to Washington and after I had this conversation with Mr. Ward. The State land agent, Mr. Merrill, informed me that this land had been certified to the State of Nevada, and after my
750 return home from New York I found a letter from Mr. Preble notifying me of that fact. This was about the last of December, 1883. I left home to go to New York about the first of December, 1883.

Q. When in Washington in December, 1883, were you in the office of E. C. Ford, your attorney; and, if so, did you have any conversation with him about the lands in controversy being certified to the State?

(Defendant's counsel objects to this line of testimony of notification of the certification of the land in controversy. Such knowledge could easily have been obtained, as the matter is a subject of public record, and with ordinary diligence such information could have been obtained, and was of equal accessibility to every person, interested or otherwise.)

A. Yes.

Q. What was the conversation?

A. We spoke of what Merrill told me, that my State land application had been accepted and listed to the State of Nevada. That is about all.

(Witness is here shown Plaintiff's Ex. No. 5.)

751 Q. Did you send this telegram from Washington?

A. I did.

Q. What did you mean by the telegram?

A. My wife telegraphed me while in Washington that my State land application was all right; that there were papers from the State land office waiting for me. I supposed they were papers for me to sign to complete my contract with the State for this land, and that I had to comply with my part of the contract with the State or else I would forfeit my rights. As Mr. Day had acted for me before in land matters, and knowing Mr. Day was frequently from home, hence my telegram to Gov. Adams or Mr. Garrard.

Q. Did you not know that you had ninety days in which to sign this contract with the State?

A. I did not until after my return home and was notified of that fact by Mr. Preble.

Q. Did you receive this telegram from your wife while in Washington?

A. Yes, sir; just before I left for home.

Q. Did you show this telegram to Mr. E. C. Ford and talk with him about it?

A. I did.

(Witness here identifies certified copy of deed from Williams & wife to Campbell, dated August 9, 1875. It is now offered in evidence by plaintiff, hereto annexed, and marked Complainant's
752 Exhibit R.)

Q. Did Campbell redeed to you a portion of the land mentioned in Exhibit R in September, 1885, the portion redeeded being a part of your homestead?

A. Yes.

(Witness identifies certified copy of deed from Campbell to Williams, dated November 15, 1875, which is now offered in evidence, hereto annexed, and marked Complainant's Exhibit S.)

Q. When was this deed executed?

A. In July or August, 1885, I think. The paper shows that it was acknowledged September 28th, 1885.

Q. Why was the deed dated back ten years?

A. For the reason that when my wife and myself made a deed to Campbell for certain lands in Hot Creek, in August, 1875, before these lands were surveyed by the Government, we did not know where the Government lines would run or fall, so we deeded him lands east of our house, where we were then living, commencing 50 feet east of our residence. When the Government surveys were made the line fell west of the house instead of the east
753 and left my residence standing on the S. E. ¼ of the N. E. ¼ of section 33, and a part of this tract had been deeded to Campbell before the public surveys were made. So I notified Campbell of that fact and told him I had to have this "forty" to complete my homestead entry, and offered him in consideration the note for $3,000 which he was to pay me for his deed, in consideration of his giving up his claim to this ground, which he agreed to do, and we destroyed the note in consideration of that agreement. We did not consider it necessary to take any deed from Campbell at that time, which he had agreed to give up to me for the cancellation of that note. I filed my homestead claim in the U. S. land office five or six months afterwards, or longer, and Mr. Campbell filed a pre-emption claim a long time afterwards to the east and north of my homestead entry, and never has claimed or pretended to claim any of the lands in Hot Creek except his pre-emption claim to the north and east of my homestead entry.

Seven or eight years after I had filed my homestead entry and had lived on and occupied the same, and after I had made my
754 final proofs to the Government to complete my homestead entry, as required by law, these men, Matthiessen & Ward, through their agent, Gluyas, set up a contest against the completion of my homestead entry, and set up this Campbell deed of August, 1875, as a reason why I should not be allowed to complete my homestead entry. As Campbell had long before given up this land, had never filed any claim to the land in the Government land office, nor anywhere else, and did not pretend to claim it, he requested Mr. Ernst to draw me a deed from him to me for this land or for any

lands embraced in my original deed to him and not included in his pre-emption entry, and we explained the whole circumstances of the former deed and the cancellation of Campbell's note for the same. Mr. Ernst drew the deed covering this part of that forty acres which was included in my former deed to Campbell, and dated it back, as nearly as he could, to the time of this agreement of Campbell with myself and wife, when the note was destroyed, and, there being no officers
755 near Hot Creek to acknowledge this deed from Campbell to me, Mr. Campbell requested Mr. Ernst to sign this paper as a subscribing witness and to take it to Belmont, acknowledge it, and have it put on record. This is the history of the whole business.

Q. I understand that in August, 1875, you made the deed to Campbell for 160 acres of land; that he gave you therefor his note for $3,000; that about November, 1875, in consideration of Campbell's deeding back to you all that portion of the S. E. ¼ of the N. E. ¼ of sec. 33 which was embraced in his deed, you destroyed the note, but that the deed was not actually executed until the year 1885. Is this correct?

A. Yes, sir.

Q. You say Matthiessen & Ward contested your homestead entry. Did they not claim to own by purchase a tract of land known as the Joslyn property, in the S. W. ¼ of the N. E. ¼ of sec. 33, and did they not contest it upon that ground?

A. They did set up a town-site claim and various other claims against my homestead entry.

Q. What other claims?

A. This Campbell deed for one and the Donahue bonds for another.

Q. What were the Donahue bonds?

756 A. It was an agreement entered into between Donahue and myself before the public lands were surveyed by the Government, which was abandoned by us, said agreement being for the purchase of certain lands, a portion of the lands falling within the lines of my homestead after the survey. Matthiessen & Ward claimed to have purchased this agreement or bond from Donahue. These were all the grounds that I remember upon which they contested my homestead.

Q. Is Geo. Ernst your brother-in-law, and is he a surveyor?

A. Yes.

Q. In your homestead contest did Ernst, for you and at your request, survey and make a map of your homestead and some adjacent lands?

A. Yes, sir.

(Witness identifies certified copy of map, which is offered in evidence, attached hereto, and marked Complainant's Exhibit T.)

Q. Are the black dots or spots in the northeastern portion of the S. W. ¼ of N. E. ¼ of sec. 33 intended to represent houses in the town site which was made a ground of contest in the matter of your homestead entry?

A. Yes.

757 (Witness here identifies map as showing his homestead entry and the H. B. Campbell pre-emption entry or patent, with approximate correctness, which is now offered in evidence, hereto attached, and marked Complainant's Exhibit U.)

Q. At about what date did you make your homestead application?

A. To the best of my recollection it was in December, 1875.

Q. When did you prove upon your homestead?

A. I think it was in 1882 or '3.

Q. When did Mr. Campbell make his pre-emption filing?

A. To the best of my recollection it was made some time in 1876.

Q. When did Mr. Campbell prove upon his pre-emption claim?

A. I don't remember the date. I think it was in 1876 or '7; don't remember.

Q. In making final proof on your homestead claim and final proof upon Campbell's pre-emption claim did not you and Mr. Campbell make the same house do duty in proving up both claims, each of you swearing in turn that the house was the property of the
758 other and standing upon the lands of the other?

A. Yes, for the reason that this is a large building, standing northeast and southwest, which we—Campbell and myself—had partially constructed before the public surveys were made. When the lines were run by the surveyors they told me that the line ran through the northeast corner of our building and through the corral, cutting our improvements in two. Campbell afterwards rented the land marked on Complainant's Ex. T. in extreme southeast corner of N. E. ¼ of section 33, corral and frame stable, and black dots in said corral, to N. S. Trowbridge, giving him a written lease of the same for five years, believing the east line of sec. 33 ran through the house, corral, and improvements, leaving these black spots in corral in Campbell's pre-emption tract and the other part of the buildings on my homestead. When Campbell proved up I was called as a witness, and I testified to his improvements and said that Campbell had partially contributed to the erection of the stone building on the land, or words to that effect, and also corrals,
759 fences, and other improvements, believing at that time that the Government line ran through and cut those improvements in two, and we so believed for a long time afterwards. In 1879 Geo. Ernst, a surveyor, of Nye county, showed me where the line did run, and told me my improvements—that is, my house—was 200 feet inside the line, leaving these lands that Campbell had leased to Trowbridge just inside of my homestead entry and on my side of the line, including the corral and improvements. There were five or six persons in the surveying party, and they all or nearly all told me that the line ran through the northeast corner of the stone house and through the corrals; particularly a man named Gould told me so, and also the chainmen. I think Gould is now dead. I do not know who the chainmen were. This stone house is near the southeast corner of the N. E. ¼ of sec. 33. As I remember, the survey was made in the latter part of August, 1865. At

that time I was living in the house designated on the maps in evidence as "Williams' dwelling" or Williams' house, near the
760 northwest corner of S. E. ¼ of N. E. ¼ of sec. 33. At the time I made my homestead proof I had moved down to what is known as the stone house, in the S. E. corner of the N. E. ¼ of sec. 33, and I had found out the mistake that the true line ran more than 200 feet east of the stone house, and the buildings and corral were all on my homestead entry.

Q. Was this party of surveyors you speak of who told you the east line of section 33 ran through the N. E. corner of the stone house the same party of Government surveyors who in fact surveyed and run the line more than two hundred feet east of the house and established a quarter-section corner almost directly east of and opposite to your house and more than 200 feet from the house?

A. Yes. I was not present when the lines were run. When the surveyors returned to their camp I asked them where the lines run which they ran through the lower part of the field that day, and they said, Across the lower corner of your field and through your corrals; and they told me they cut the stone house in two and
761 chained to the northeast corner of the building. That is all that was ever said about it. I think Mr. Jenkins and Mr. Gould both told me about it.

Q. In your direct testimony you stated that Matthiessen & Ward had brought suits against you for the purposes of blackmail. Have they ever brought any suit against you or instituted any proceeding except to obtain or hold possession or procure the final title to lands and property which they had bought and paid for?

A. I think they have.

Q. Name the suit or proceeding not brought for the purposes mentioned in the last preceding question.

A. This damage suit pending in the U. S. circuit court for this district for $55,000 on the Campbell deed I believe to be such a suit. Their contest against my homestead on the Donahue claims I believe their agents know to be fraudulent, and I believe they are fraudulent. Matthiessen & Ward never paid me any money.

Q. Is not the damage suit a suit growing directly out of your attempt to defeat their mill-site application by applying to and
762 contracting with the State of Nevada for the lands in controversy?

A. I never attempted to defeat their mill-site application. They are trying to defeat my State land application, I believe, for the purpose of defrauding me out of my rights as stipulated in my bonds and subsequent agreements with the agents of the New Phila. M. Co.

Witness here identifies complaint in case of Franz O. Matthiessen and Lebbeus B. Ward against J. T. Williams, pending in U. S. circuit court for this district, as the complaint in the suit which he says was brought for the purpose of blackmail; also the demurrer to the complaint in same case. Certified copies of said complaint

and demurrer are now offered in evidence, hereto annexed, and marked Complainant's Exhibits V & W, respectively, for the purpose of showing that the suit is based upon the laches, fault, and fraud and alleged fraud of defendant concerning the title to the mill site on the lands in controversy.)

Q. Was not Matthiessen & Ward's contest of your homestead application, so far as it was based on the Donahue bond, a con-
763 test growing out of certain rights and privileges which you had bonded and contracted to Donahue, and which Donahue had sold and assigned to Matthiessen & Ward?

A. Yes; but which contracts and bonds had not been complied with and had been cancelled long before these bonds and pretended rights had been purchased by Matthiessen & Ward's agent, Gluyas, from said Donahue. Donahue has testified under oath that he notified said agent, Gluyas, that he did not consider these bonds and contracts of any value; that he had released me long prior to his sale of the bonds to Matthiessen & Ward, but that if he, Gluyas, wanted them he could have them for whatever he thought they were worth.

(Plaintiff moves to strike out the last portion of the answer upon the ground that it is not responsive to the question and is incompetent.)

Q. At the homestead contest did not Matthiessen & Ward claim that the conditions of the bond had been complied with, and that the bond had not been cancelled, and that the rights and privileges named in the bond were of great value?

764 A. I don't know what pretensions they have made or set up in relation to these bonds. I only know this bond was offered in evidence among other papers before the Eureka land office when they contested my homestead entry.

Q. At the contest did not Matthiesson & Ward make the Donahue bond one of their grounds of contest?

A. Yes.

Q. Is the homestead contest yet finally decided?

A. Not that I know of. I have won it three times before the Department, and they got it back to the Eureka land office on perjured and false affidavits for the alleged purpose of taking additional testimony.

(Complainant moves to strike out the last portion of the answer upon the ground that it is impertinent and scandalous.)

End of cross-examination.

Redirect examination:

Q. When you were in Gov. Abbett's office, in New York, did you then know this land had been certified to the State?

A. I did not.

765 Q. At the same interview in Gov. Abbett's office did you not offer to submit this whole controversy to the arbitration of the Hon. Thomas Wren, of Eureka, who had been the attorney for Matthiessen & Ward?

A. I don't remember that I did make them that proposition at that time. I had previously made their agent, Gluyas, that offer time and again; that we would put Mr. Wren under oath and submit the whole matter to him and abide by his decision, which proposition he refused to accept. I then proposed, and proposed to Mr. Ward in New York, that if he did not think I was right that I would leave it to arbitration to any three business men or any three district judges in the State; that I would choose one and they the other, and the two so chosen could select a third man, and we would submit our papers and contracts to them, and I would abide by their decision in the matter. I also made the same proposition to their agent, Gluyas, which proposition both Ward and Gluyas refused.

766 Q. Were not the Donahue bonds and contracts used in former contests on your homestead application? If so, how often?

A. They have been used twice, I believe, on the first contest and on the rehearing. The first contest was in 1883—don't remember date—and the rehearing was in 1884.

Q. Did not Donahue testify at the first contest of your homestead application that he had no interest whatever in the bonds and contracts made by you to him, and did he not make a separate affidavit to that effect?

A. Yes, to both branches of the question.

Q. Did you notify Gluyas that Donahue had no interest in said bonds and contracts?

A. Frequently in conversation.

Q. Are you now ready to comply with all the contracts and agreements which are the subject of this controversy upon the compliance of the other parties thereto?

(Objected to by plaintiff upon the ground that the question has already been once propounded and fully answered, and upon the further ground that there are no contracts and agreements in this controversy to which the Government is a party or in any way connected with.)

A. Yes.

Recross-examination:

767 Q. What matter did you ever offer to submit to arbitration and between what parties was it to be arbitrated?

A. The whole matter in dispute between the New Phila. S. M. Co. or its successors and myself.

Q. What matter was in dispute between you and the purchasers at sheriff's sale of the New Phila. Co.'s quartz mill?

A. I claim certain rights in the property as stipulated in my bonds and contracts with the agents of the New Phila. M. Co.

Q. What rights did you claim in the quartz mill after it was sold at sheriff's sale?

A. I always claimed that the New Phila. M. Co. or its successors or agents had never complied with the terms of certain bonds and subsequent contracts with me in relation to this mill, in not delivering me 5,000 shares of its stock and in not paying me $20,000 in money, as agreed between me and its agents in the bonds and subsequent contracts.

Q. Was the quartz mill as a quartz mill an incorporated company, and did it have any shares, and did the quartz mill ever owe you $20,000?

768 A. I don't know of my own knowledge whether it was a corporation or not. I have been informed that it belonged to a corporation—the New Phila. M'g Co. It was always claimed and managed by the agents of said company, and I have understood that it was sold by the sheriff of Nye county for debts of the company.

Q. Did the purchasers of the quartz mill at sheriff's sale ever owe you or ever agree to pay you on any account the sum of $20,000 or any other sum?

A. No. Their agent, Gluyas, informed me that these men, Matthiessen & Ward, who were stockholders in the New Phila. M. Co. were having trouble in New York—the treasurer of said company, a man named Smith—and as soon as they succeeded in freezing these parties out in New York they would settle with me and do what was right and go to work.

(Plaintiff moves to strike out all of the answer after the word No upon the ground that it is not responsive to the question and is incompetent.)

Q. Be kind enough to answer this question plainly and without evasion. What interest or title did you claim or have in the

769 quartz mill of the New Phila. M. Co. after it had been sold by the sheriff of Nye county on executions against the company?

A. I believe, sir, that I had a right to my 5,000 shares in the New Phila. M. Co., as covenanted in these bonds and subsequent agreements; that I had a right to complete my titles to this land in fee from the Government, as stipulated in my bonds and subsequent agreements with the agents of the New Phila. M. Co., as I had served a written notice on the agent of this New Phila. M. Co. and the agent of Matthiessen & Ward long before any attachments or suits had been commenced against this company and its agents for the sale of this property; that the company had forfeited all its rights to any land deeded to them by me under its bonds and subsequent agreements, and for them not to remove any property from the premises; that I did not consider that they had any right to sell my rights by sheriff's deed or any other deed, as they had not complied with their contracts with me, as stipulated in said bonds and subsequent contracts.

Q. Had you not, long before the sheriff's sale of the quartz mill,

deeded the land upon which the mill was built, first to H. B.
770 Campbell and afterwards to the New Phila. M. Co., as per deeds in evidence?

A. Yes, in the manner before explained, provided the mill site is on the Campbell tract.

Q. Did Matthiessen & Ward ever do any business in Nye county or have an agent there before their purchase of the quartz mill at sheriff's sale?

A. I don't know.

Q. Did you ever at any time make an offer to the Government or any of its officers or agents to submit any matter or controversy to arbitration to which the Government was a party, or did you ever offer to submit any of the issues made by the pleadings in this case to arbitration?

A. No.

End of recross-examination.

Witness recalled for further redirect examination:

Q. Did you have an understanding with your attorney, Bishop, that the relinquishment of your desert-land entry should not be filed in the U. S. land office at Eureka until it was known that your application to purchase the land from the State had been received by the State land office at Carson?

771 (Objected to by plaintiff upon the ground that any understanding had between defendant and his attorney is incompetent evidence in this case, it not being shown that plaintiff was a party to the understanding.)

A. Yes.

Q. Was the man Richard Gluyas, who is named in the testimony, present at Eureka when you were consulting with your attorney and considering the matter of your relinquishment of your application?

A. Yes.

Q. Was he then aware of your intention to relinquish your desert-land entry and apply to the State to purchase?

A. I don't know. I notified him some time before this that I intended to make such a change, unless he accepted my proposition to guaranty me in my rights, as before mentioned.

Q. How came Richard Gluyas to ask when you returned from Eureka if you had relinquished your desert-land entry? Did he know you had gone to Eureka for that purpose?

A. I don't know why he asked me that question. I had notified him that I was going to Eureka for that purpose.

772 Did you return to Hot Creek from Eureka on the same day your attorney prepared your application to purchase the land from the State?

A. Yes.

Q. What is the distance from Eureka to Carson, and how long does it take a letter to reach Carson from Eureka?

A. The distance is 402 miles. It takes a letter two days to reach Carson.

Cross-examination:

Q. How far is it from Eureka to Hot Creek?

A. About 80 or 90 miles.

Q. You have already testified that you awoke Mr. Bishop early in the morning and prepared your papers and returned to Hot Creek the same day, and upon your arrival home met Mr. Gluyas at your gate and had a conversation with him concerning the relinquishment of your desert-land entry and your application to the State for the lands in controversy. Explain how this could be if Gluyas was in Eureka when you were consulting with Bishop and preparing the papers?

773 A. Mr. Gluyas was in Eureka when I was there and while I was consulting Bishop and making preparations for this cancellation and State-land entry. He left for home the day before I did. Mr. Bishop had prepared these papers ready for me to sign, and I wanted to return on the stage and waked Mr. Bishop up, as I have detailed before. There was at this time, I believe, a daily stage from Eureka to Hot Creek.

JOS. T. WILLIAMS.

Acknowledged by said Williams to be his signature and his testimony.

Attest: T. J. EDWARDS, *Com'r.*

Defendant now offers in evidence an act of the Legislature of the State of Nevada entitled "An act to provide for the selection and sale of lands that have been or may hereafter be granted by the United States to the State of Nevada," approved March 5, 1873; also an act of the Legislature of the State of Nevada entitled "An act fixing the price of lands within the limits of the Central Pacific railroad grant, and requiring applicants to pay U. S. land office fees; also defining the amount of land allowed to each ap-

774 plicant and in relation to issuing patents and the purchase of township plats, and authorizing the State land register to perform certain duties," approved March 3d, 1881; and also an act supplementary to an act entitled "An act to provide for the selection and sale of lands that have been or may hereafter be granted by the United States to the State of Nevada," approved March 5, 1873, and repealing the act in reference thereto, approved February 29, 1879, approved March 7, 1881; which said three acts are respectively marked Defendant's Exhibits No. 4, No. 5, and No. 6, and are as follows, to wit:

DEFENDANT'S EXHIBIT No. 4.

The people of the State of Nevada, represented in senate and assembly, do enact as follows:

SECTION 1. For the purpose of selecting and disposing of the lands that have been or may hereafter be granted by the United States to

the State of Nevada, including the sixteenth and thirty-sixth sections and those selected in lieu thereof, in accordance with the terms and conditions of the several grants of land by the United States to the State of Nevada, a State land office is hereby
775 created, of which the surveyor general shall be, and is hereby, made *ex officio* land register. He shall, as such land register, be required to give bonds in the sum of ten thousand dollars for the faithful performance of his duties, which bonds shall be approved by the Governor and filed in the office of the secretary of state. The land register shall keep his office at the seat of government, and the same shall be kept open on all legal days between the hours of ten o'clock a. m. and four o'clock p. m. for the transaction of business.

SEC. 2. The register shall procure one copy of each township plat of the public surveys now approved or that may hereafter be approved by the proper United States authorities, unless the same shall have been previously obtained: Provided, That the cost of the same shall not exceed eight dollars each and shall be made upon drawing paper. He shall keep a record of all applications and of all lands which have been or may hereafter be approved to the State and of all lands which have been sold by the State, which, together with all plats, papers, and documents relating to the
776 business of his office, shall be open to public inspection during office hours without fee therefor.

SEC. 3. The register shall furnish within a reasonable time a copy of the plats of townships within any county to the county surveyor of such county, to be used by him in furnishing such information as the register may require of him concerning the lands within such townships, and all lands sold by the State shall be reported by the register to the county surveyor of the county in which such lands are situated, and said surveyor shall immediately mark the same upon the township plat in his office in accordance with the instructions of the register and said county surveyor shall keep such plats, subject to the inspection of all persons interested in examining the same on all legal days during office hours.

Whenever a county surveyor shall have knowledge of any tract or tracts of land within his county subject to selection by the State, and which for any cause may appear to him to be of special value to the State, he shall report the same to the register, describing such location, with reference to the Government surveys, by legal subdivisions, and he shall state fully and definitely in such report
777 his reasons for considering such tract or tracts of special value.

SEC. 4. The minimum price of all lands embraced in this act not included within the twenty miles Central Pacific railroad limits is hereby fixed at one and one-fourth dollars per acre in currency, and the minimum price of all lands within said twenty-miles limit is hereby fixed at two and one-half dollars per acre in currency; but the board of regents of this State shall have power to fix a higher price per acre upon any of said lands not settled upon or applied

for by individuals prior to the date of such higher price having been fixed.

SEC. 5. All lands to which the State has acquired title, except those specified in section seven of this act, when in the opinion of the board of regents it shall be advisable for the interests of the State, shall be advertised by the register as being subject to sale at the minimum price, unless a higher price shall have been fixed thereupon by said board, and if a higher price shall have been fixed, then at such higher price; and such notice shall specify that such land may be purchased at the price stated at any time within six months after the date of such notice, and if not purchased
778 within such specified time the board of regents may reduce the price, provided they do not reduce it below the minimum price, and the register thereupon shall readvertise the same at such reduced price.

SEC. 6. All applications to purchase lands shall be made in writing to the land register and shall be signed by the applicant, his or her agent, and shall designate, in conformity with the United States survey, the tracts of land applied for, number of acres, price per acre and amount necessary to purchase such land, and the section of this act under which the applicant wishes to purchase; also residence, post-office address, and county in which such land is located.

SEC. 7. Upon the application of any person to purchase land not previously selected by the State the land register shall certify to the State controller that such person is entitled to apply for the land, describing the same as in the application, which shall accompany said certificate, and such certificate shall state the amount necessary to purchase said land. The controller shall thereupon issue his order directing the State treasurer to receive from such applicant
779 said amount, placing the same into the State school fund, and upon such payment being made the treasurer shall issue his receipts in duplicate, describing the land applied for, and he shall at the same time enter in his abstract of applications the name or names of the person or persons so applying, number, description of land, date of receipts, and amount paid by the applicant.

Upon the return of the application with the treasurer's receipt to the land office the register shall file the same, which shall complete such application. Whenever purchase can be completed in whole or in part upon land thus applied for the land register shall certify the same to the controller and treasurer each, and shall at once proceed to perfect the sale. Upon thus certifying to the treasurer the register shall surrender the treasurer's receipt therewith issued on payment made by applicant, the duplicate receipt becoming null and void on the completion of such purchase. Should the controller, upon the receipt of such certificate, find that any payment had been wrongfully apportioned he shall issue his order directing the treasurer to transfer such amount to its proper fund. If, from the non-approval of the land to the State or other cause, the
780 contemplated sale cannot be perfected in whole or in part then, upon the demand of the applicant, the land register shall certify to the controller that such applicant is entitled to the

amount paid by him or her from the non-approval or other cause, as the case may be, and the controller shall draw his warrant upon the State school fund for the amount due such applicant, and the same shall be paid by the treasurer. The land register shall at the same time certify in like manner to the State treasurer of the non-approval of such land, returning the receipt filed in his office by such applicant, the duplicate receipt becoming null and void. Upon the application of any person for the purchase of land not previously selected by the State, when such application is accompanied by the treasurer's receipt, the land register shall serve the surveyor of the county in which such land is situated with a written notice of such application to purchase, and said surveyor shall post the same conspicuously in his office for the period of sixty days from the date thereof.

SEC. 8. Upon the application of any person or persons for the purchase of land after the State has obtained title thereto, should such person or persons be entitled to purchase, the land register shall certify the same to the controller. Said certificate shall
781 be accompanied by such application as provided in section seven of this act; whereupon the controller shall issue his order directing the treasurer to receive the amount necessary to purchase such land, placing the same in the fund specified in the order. Upon payment being made by applicant the treasurer shall issue his receipt for the same, and on return of said application, with the receipt, to the State land office the register shall thereupon file the same and perfect such sale.

SEC. 9. In addition to the mode and manner of sale of the lands belonging to the State, the State register is hereby further empowered to sell and dispose of any agricultural or grazing lands, payable in installments, as hereinafter specified—that is to say, with any party or parties wishing to purchase lands under the provisions of this section, and who shall have made proper application therefor and duly established his, her, or their right to purchase under the provisions of this act, the State register is hereby authorized and required to enter into contract to sell such lands at such price as the same may be valued for the time being by the proper authority, payable as follows, to wit, one-fifth of the amount to be paid at the time of contract and the balance in nine equal annual
782 installments, with interest at the rate of ten per centum per annum, payable annually upon all deferred installments; provided the purchaser, his or her heirs or assigns, may at any time prior to the maturity of such contract make full payment. All such contracts shall be entered into in writing with the party or parties so purchasing, in which the conditions shall be distinctly expressed that upon failure to pay the principal and interest thereon as stipulated the said land shall immediately and unconditionally revert to the State and be thereafter subject to sale in the same manner and under the same conditions as though no such prior contract and sale had been made.

It shall be the duty of the register to certify each sale and the terms thereof to the State treasurer, and the register shall at the same time

certify to the controller the amount necessary for the first payment and for each succeeding payment until full payment shall have been made, and the controller, upon the receipt of each such certificate, shall issue his order to the treasurer, as in section seven of this act, and upon payment being made by the applicant of the amount specified in the order the treasurer shall issue his receipts in duplicate, and when full payment shall have been
783 made patents shall issue to the purchaser, his or her heirs or assigns, as provided for in section thirteen of this act: Provided, That no timbered lands shall be sold unless the whole purchase price shall be paid at the time of application.

SEC. 10. The holder of any unlocated land warrant of this State heretofore issued shall have the right to use the same in payment for lands which he or she may desire to purchase from the State, and any person holding any of said warrants for one hundred and sixty acres or less, at the rate of two and one-half dollars per acre, shall be allowed to surrender the same to the State treasurer in full payment for double the number of acres expressed therein of land valued at one and one-fourth dollars per acre; and upon the surrender of such land warrant to the controller by the treasurer, properly endorsed, the controller shall draw his warrant upon the State school fund in favor of the State treasurer for the amount of said land warrant.

SEC. 11. The State treasurer shall render to the State controller a true and correct statement of the amount of special deposits on hand made by applicants for the purchase of State lands, and
784 the controller shall thereupon order the same to be transferred from the special-deposit account to the State school fund. All moneys hereafter paid into *to* treasury on land shall be paid in on an order from the controller, and all moneys refunded to applicants shall be drawn out upon warrant issued by the controller upon the treasury, as provided in section seven of this act. All purchases to be completed or amounts to be refunded upon special-deposit receipts issued by E. Rhodes, defaulting treasurer, and still outstanding, shall be disposed of in the following manner: Whenever purchase can be completed in part or in whole upon land thus applied for the land register shall perfect such sale, surrendering to the controller the treasurer's receipts issued by said E. Rhoades, with his certificate of the completion of such sale, and the controller shall receive and file the same in his office as vouchers. The register shall at the same time also certify such sale to the treasurer; and whenever, for non-approval of the land to the State or other cause, the contemplated sale cannot be completed, the land register shall surrender to the controller said special-deposit receipts, with a certificate that said applicant is entitled to the amount paid, and the controller shall thereupon file such receipts and certificate in
785 his office as vouchers, drawing his warrant upon the proper fund for said amount, and the treasurer shall pay the same. The land register shall at the same time certify the the non-approval in like manner to the treasurer.

SEC. 12. An occupant or party in possession shall have a preferred

right to purchase not exceeding three hundred and twenty acres of land, at the minimum price, for the period of six months after the date of approval to the State of the lands occupied or possessed by him or her, and when two or more persons claiming a preferred right by reason of occupancy or possession apply to purchase the same lands the register shall certify such applications to the district court of the county in which such lands are situated and notify the contesting applicants thereof. The judge or court shall then appoint a commissioner in the vicinity of the land so in dispute to take and report to such court all the testimony of the parties in the case. The contest shall then be tried and determined as ordinary actions in said court, and when so determined shall be certified to the register, who shall proceed thereafter with the successful contestant in the same manner as if he alone had applied in the premises;
786 provided that all costs attending such contest shall be paid by the parties litigant, as the court or judge may determine; and provided further that a preferred right shall be based upon occupancy or possession dating prior to any application to purchase the land having been filed with the register. When two or more persons, neither claiming a preferred right, apply to purchase the same lands the first applicant shall be allowed to purchase.

SEC. 13. No person shall be allowed to purchase more than three hundred and twenty acres of land from the State under the provisions of this act.

SEC. 14. It is hereby made the duty of the register to select as portions of the several grants of land to this State all land for which money has been deposited under the provisions of section seven of this act, and whenever he shall have knowledge of any tract or tracts of land within the State which for any cause may appear to him to be of special value and subject to location by the State he may select the same and, if necessary, by and with the advice and consent of the board of regents, instruct the county surveyor of the county wherein such land is situated to survey such lines and
787 make such examination as may serve to indicate the proper location and true character and quality of such lands, and said county surveyor shall, without delay, proceed to make such survey or examination and shall report the same to the register in accordance with such instructions as he may have received, and for such services he shall receive such sum as the board of regents may allow, and for the faithful performance of such service of county surveyor shall be liable upon his official bond.

SEC. 15. The title of the State to any lands sold under the provisions of this act shall be conveyed to purchaser or to his or her heirs or assigns by patents, free of charge, in such form as the attorney general and register shall jointly prescribe, to be prepared by the register, signed by the Governor, and shall have the great seal of the State affixed by the secretary of state, and shall be countersigned by the register, and the secretary of state and the State register shall each keep a record of the patents issued.

SEC. 16. The State register shall be entitled as such register to a

salary of two thousand six hundred dollars per annum, to be
788 paid quarterly, and he is hereby authorized to appoint a deputy, who shall be entitled to a salary of three thousand dollars per annum, to be paid monthly. The controller of State shall at the end of each month draw his warrant upon the State treasurer, in favor of said deputy, for the amount of his compensation then due, and the State treasurer shall pay the same out of any money derived from the sale of land.

SEC. 17. All funds derived from the sale of lands under this act shall be invested in interest-bearing bonds of the State or of the United States, as required by section three of the eleventh article of the constitution of this State. The proceeds of the sale of lands donated to this State by act of Congress of July second, eighteen hundred and sixty-two, shall be invested by the board of regen-s, and the proceeds of all other lands herein referred to, whenever the sum of five hundred dollars shall have been paid into the State school fund, shall be invested as directed by law.

SEC. 18. All claims and accounts for services or for expenses authorized by and necessarily incurred in carrying out any of the provisions of this act, except the salaries of the register and
789 his deputy, shall be presented to and audited as other claims by the State board of examiners, and when any claim shall be passed and allowed by said board they shall apportion the same so payable or chargeable to the several funds derived from the sale of lands as they shall deem proper, and so much of the funds received from the sale of lands in the several grants as may be necessary for the payment of such audited claims shall be, and the same is hereby, appropriated out of the several funds respectively for the payment of such claims, and the controller shall draw his warrant accordingly. The board of examiners are hereby authorized and directed to allow and direct to be paid such sums to the receivers of the United States land offices for any official services performed by them in relation to the designation of the selected lands upon the books of their respective offices as they may be justly entitled to receive under the laws of the United States or the instructions of the proper Department, at Washington city.

SEC. 19. An act entitled "An act to provide for the selection and sale of lands granted by the United States to the State of Nevada," approved April second, eighteen hundred and sixty-seven,
790 and also an act entitled "An act to provide for the selection and sale of lands granted by the United States to the State of Nevada," approved March fourth, eighteen hundred and seventy-one, and all other acts and parts of acts, so far only as in conflict with the provisions of this act, are hereby repealed: Provided, That such repeal shall not divest any parties of any rights heretofore acquired under any of said acts referred to.

DEFENDANT'S EXHIBIT No. 5.

The people of the State of Nevada, represented in senate and assembly, do enact as follows:

SECT. 1. The price of all agricultural and grazing lands applied for after the approval of this act, whether within or without the limits of the Central Pacific railroad grant, is hereby fixed and shall be sold at one dollar and twenty-five cents ($1.25) per acre: Provided, That nothing in this act shall invalidate or change the condition of any completed sale or any contract which may
791 heretofore have been entered into between the State and individual purchasers for the sale of any land, and the price of all lands within the limits of the Central Pacific railroad grant which have heretofore been applied for shall remain fixed at two dollars and fifty cents ($2.50) per acre, notwithstanding such lands have been or may hereafter be forfeited to the State.

SEC. 2. All applicants for the purchase of State lands shall, at the time of making application, deposit with the State land register the amount of fees required for selecting the same in the United States local land office.

SEC. 3. All agricultural and grazing lands selected under the two-million-acre grant of June sixteenth, eighteen hundred and eighty, may be sold in tracts equal to one section to each applicant, notwithstanding such applicant may have heretofore purchased three hundred and twenty acres of the State.

SEC. 4. Patents shall invariably issue to the applicant and none other, except as may be otherwise ordered by a competent court having jurisdiction of the estate of a deceased applicant.

792 SEC. 5. The State land register is hereby authorized to withdraw from the local and general land offices of the United States all selections that have been or may be erroneously made.

SEC. 6. The impression of the seal of the State land office upon the original or copy of any paper, plat, map, or document emanating from such office shall impart verity to the same, and such paper, plat, map, or document bearing the impression of such seal shall be admitted as evidence in any court of this State, and the use of such seal by the State land register is hereby authorized.

SEC. 7. The State land register is hereby authorized to procure from the office of the United States surveyor general all plats of townships surveyed and not already purchased at a price not to exceed six dollars per copy.

SEC. 8. All acts and parts of acts heretofore passed, so far only as they conflict with the provisions of this act, are hereby repealed.

DEFENDANT'S EXHIBIT NO. 6.

The people of the State of Nevada, represented in senate and assembly, do enact as follows:

793 SEC. 1. It shall be lawful from and after the passage of this act for the State land register to receive additional applications for the purchase of any lands belonging to the State wherein the first applicant or applicants shall have failed to make application for contract to complete the purchase of such lands to a patent.

SEC. 2. The State land register shall proceed with all reasonable

dispatch to notify and require all persons who have made or may hereafter make application to purchase land of the State of Nevada to make full and immediate payment therefor or to enter into contract with the said State land register in accordance with law for the purchase of the land for which such persons have applied.

SEC. 3. The manner of notifying such persons shall be as follows: The State land register shall prepare proper notices requiring the applicant or his or her agent or attorney to make full payment or enter into contract for the purchase of the land for which he or she has applied, and shall enclose with such notice duly prepared contracts in duplicate for the applicant to sign, and shall
794 address the same to such applicant or his or her agent or attorney, by mail, in a registered letter, and he shall file the post-office receipt in his office.

SEC. 4. If at the expiration of ninety days from the date of mailing such notices and contracts in duplicate the party or person so notified, or his or her legal representative, shall fail to make the required full payment or to sign and return to the register such contracts, he or she shall forfeit his or her right to complete the purchase of such land, and the title of the State to such land shall rest as fully in the State as though it was never applied for, and shall be subject to sale to any person or persons, including the person or persons so forfeiting such land on previous application.

SEC. 5. Any and all sum or sums of money heretofore deposited as partial payment on lands so forfeited. as provided in section four of this act, shall be forfeited to the State, and upon such forfeitures shall immediately and unconditionally become the property of the State.

SEC. 6. This act shall apply only to applications for such
795 lands as shall have been for six months or more previous to the time of mailing such notice, as provided in section one of this act, approved to the State of Nevada by the United States.

SEC. 7. The act entitled "An act supplementary to an act entitled An act to provide for the selection and sale of lands that have been or may hereafter be granted by the United States to the State of Nevada," approved March fifth, eighteen hundred and seventy-three, approved February twenty-eighth, eighteen hundred and seventy-nine, is hereby repealed.

Here closed the testimony for the defendant.

T. J. EDWARDS, *Com'r.*

Endorsed: U. S. cir. court, dist. Nevada. United States *vs.* J. T. Williams. Defendant's testimony. Taken by T. J. Edwards, U. S. commissioner. Published by order court and filed Nov. 1, 1886. T. J. Edwards, clerk.

796 DEFENDANT'S EXHIBIT No. 1. T. J. E., Com'r.

Know all men by those presents that Jos. T. Williams, of Hot Creek, Nye county, Nevada, is held and firmly bound unto N. S. Trowbridge, of Tybo, Nye Co., Nevada, in the sum of five thousand

dollars, gold coin of the United States of America, to be paid to the said N. S. Trowbridge, his executors, administrators, or assigns; for which payment, well and truly to be made, he binds his heirs, executors, and administrators firmly by these presents.

Sealed with his seal and dated the 27th day of November, A. D. one thousand eight hundred and seventy-eight.

The conditions of the above obligation *is* such that if the above-bounden obligator shall, on the 27th day of June, A. D. one thousand eight hundred and seventy-nine, make, execute, and deliver unto the said N. S. Trowbridge or to his assigns—provided that the said N. S. Trowbridge shall on or before that day have paid to the said obligator the sum of twenty-five thousand dollars, gold coin of the United States of America, the price by said N. S. Trowbridge agreed to be paid therefor—a good and sufficient deed for con-
797 veying and assuring to the said N. S. Trowbridge, free from all incumbrances, all right, title, and interests, estate, claim, and demand, both in law and equity, as well in possession as in expectancy, of, in, or to that certain portion, claim, and mining right, title, or property on certain veins or lodes of rock containing precious metals of gold, silver, and other minerals and situated in the Argenta mining district, county of Nye and State of Nevada, described as follows, to wit, known and recorded as the "Richmond," "Empire," "Crescent," "Bullion," "Dexter," and "Bismark," containing 1,500 feet each in length and 600 feet each in width, as is shown by the mining records of said district; also sufficient water at Hot Creek, Nevada, to supply a twenty-stamp —, with pans, etc., and a mill site near said Hot Creek, with ground for wood-yards, buildings, and other necessary uses of said mill, then this obligation to be void; otherwise to remain in full force and virtue.

JOS. T. WILLIAMS. [SEAL.]

Signed, sealed, and delivered in the presence of—
JAS. S. TROWBRIDGE.

Recorded, at request of N. S. Trowbridge, Dec. 16th, 1878, at 49 min. past 8 a. m.

JAS. A. SERVICE, *Recorder*,
By GEORGE ERNST, *Deputy*.

798 TYBO, NEVADA, *June 23d*, 1879.

Know all men by these presents that I have this day extended the bond of the six mines situated in Old Dominion and Rattlesnake cañon-, near Hot Creek, Nye county, Nevada, and water right and mill site given by me to N. S. Trowbridge and expiring June 27th, 1879, for the further period of thirty days from said June 27th, being to July 27th, 1879, the condition of the bond in all other respects remaining the same.

JOS. T. WILLIAMS.

Recorded, at request of N. S. Trowbridge, June 24th, A. D. 1879, at 35 min. past 12 m.

GEORGE ERNEST, *Recorder*,
By W. S. BRYDEN, *Deputy*.

Whereas N. S. Trowbridge, of Tybo, Nye Co., Nevada, under date of November 27th, 1878, has bonded certain properties in Nevada belonging to Hon. J. T. Williams, as follows: Water right and mill site at Hot Creek; Empire & Richmond mines, near Old Dominion cañon; Bismark, Dexter, Crescent, & Bullion mines, at Argenta; and whereas said Trowbridge has empowered me to dispose of
799 the same: Now, therefore, for and in consideration of the sum of one dollar and other valuable considerations, I hereby agree with Wm. G. Smith, of New York city, to give him the option of purchasing said properties under the bond on the following terms, viz: Five thousand dollars cash upon the legal transfer to him of the water rights, mill sites, & 160 acres of land; five thousand dollars cash upon the legal transfer by patent to him of the Empire and Richmond mines; fifteen thousand dollars cash upon the legal transfer by patent to him of the Dexter, Bismark, Bullion, and Crescent mines, together with five thousand shares of the present capital stock of the New Philadelphia Silver M'g Co. In case said Smith shall elect to organize a new company with the above properties and a nominal capital stock of 500,000 dollars, then I am to receive five thousand shares of the stock of the new companys in lieu of the stock of the New Philadelphia Company, it being understood and agreed that I will use every effort to have included in this transfer the entire ownership of the hots springs, water rights, and ranch belonging to Mr. Williams & any other properties that can be secured or obtained from said Williams and others.
800 I agree to take charge of and superintend the management of said properties, erect the requisite reduction works, and become identified with the successful working of the same for the stated sum of five hundred dollars per month and such further consideration in the future as said Smith shall deem equitable and just.

J. E. CLAYTON. [SEAL.]

New York, March 15th, 1879.
ALFRED KIMBER.

STATE OF NEW YORK, }
City & County of New York, } ss:

Be it remembered that on this 9th day of December, A. D. 1879, before me, Charles Nettleton, a commissioner for the State of Nevada, in New York, personally came before me Alfred Kimber, subscribing witness to the foregoing instrument, to me personally known *to me* to be such subscribing witness to the above instrument, who, being by me duly sworn, did depose and say that he resides in New York city, New York; that he is personally acquainted with J. E. Clayton, and knows him to be the same person described in and who signed, sealed, and executed the foregoing instrument for the uses and purposes therein mentioned, and that he, said Alfred
801 Kimber, subscribed his name as a witness thereto.

ALFRED KIMBER.

Subscribed in my presence and sworn to before me this 9th day of December, A. D. 1879.

In witness whereof I have hereunto set my hand and af-
[SEAL.] fixed my official seal.

CHARLES NETTLETON,
Commissioner for Nevada in New York,
No. 117 Broadway, N. Y. City.

Recorded, at request of Charles Nettleton, Dec. 22d, 1879, at 20 min. past nine a. m., in Book B of Miscellany, pp. 208 & 209, Nye county, Nevad-, records.

GEORGE ERNST,
Co. Recorder.

Agreement—J. S. Clayton with Wm. G. Smith.

Whereas N. S. Trowbridge, of Tybo, Nye county, Nevada, under date of Nov. 27th, 1878, has bonded certain properties in Nevada belonging to Hon. J. T. Williams, as follows: Water rights and mill site at Hot Creek; Empire and Richmond mines, near Old Dominion cañon; Bismark, Dexter, Crescent, & Bullion mines
802 at Argenta; and whereas said Trowbridge has empowered me to dispose of the same:

Now, therefore, for and in consideration of the sum of one dollar and other valuable consideration, I hereby agree with Wm. G. Smith, of New York city, to give him the option of purchasing said properties under the bond on the following terms, viz: Five thousand dollars cash upon the legal transfer to him of the water rights, mill site, and 160 acres of land; five thousand dollars cash upon the legal transfer by patent to him of the Empire and Richmond mines; fifteen thousand dollars cash upon the legal transfer by patent to him of the Dexter, Bismark, Bullion, and Crescent mines, together with five thousand shares of the present capital stock of the New Philadelphia Silver M'g Co. In case said Smith shall elect to organize a new company with the above properties and a nominal capital stock of 500,000 dollars, then I am to receive five thousand shares of stock of the new company in lieu of the stock of the New Philadelphia Company, it being understood and agreed that I will use every effort to have included in this transfer the entire
803 ownership of the hot springs, water rights, and ranch belonging to Mr. Williams and any other properties that can be secured or obtained from said Williams and others.

I agree to take charge of and superintend the management of said properties, erect the requisite reduction works, and become identified with the successful working of the same for the stated sum of five hundred dollars per month and such further consideration in the future as said Smith shall deem equitable and just.

J. E. CLAYTON. [SEAL.]

New York, March 15th, 1879.

ALFRED KIMBER.

STATE OF NEW YORK, } ss:
City and County of New York, }

Be it remembered that on this 9th day of December, A. D. 1879, before me, Charles Nettleton, a commissioner for the State of Nevada in New York, personally came before me Alfred Kimber, subscribing witness to the foregoing instrument, to me personally known to be such subscribing witness to the above instrument, who, being by me duly sworn, did depose and say that he resides at New York city, New York; that he is personally acquainted with J. E. Clayton and know- him to be the same person described in and who
804 signed, sealed, and executed the foregoing instrument for the uses and purposes therein mentioned, and that he, said Alfred Kimber, subscribed his name as a witness thereto.

ALFRED KIMBER.

Subscribed in my presence and sworn to before me this 9th day of December, A. D. 1879.

In witness whereof I have hereunto set my hand and affixed my official seal.

[SEAL.] CHARLES NETTLETON,
Commissioner for Nevada in New York,
No. 117 *Broadway, N. Y. City.*

Recorded, at request of Chas. Nettleton, Dec. 22d, 1879, at 20 min. past 9 a. m.

GEORGE ERNST, *Recorder.*

(Above instrument is duplicated in the original record.—Clerk.)

Agreement—N. S. Trowbridge to J. T. Williams.

This agreement, made and entered into by N. S. Trowbridge, of Tybo, Nye county, Nevada, provides that, in consideration of
805 the sum of one dollar and other valuable considerations, the said Trowbridge agrees to and with Jos. T. Williams, of Hot Creek, Nye county, Nevada, that the terms of a certain agreement, made by J. E. Clayton to William G. Smith, of New York city, under date of March 15th, 1879, shall be fulfilled, and that in case said terms of said agreement are not fulfilled, then any moneys which may have been paid to said Williams under said agreement shall be forfeited, and the title of all property conveyed by said Williams to said Trowbridge shall revert to said Williams.

In witness whereof I have this 9th day of June, A. D. 1879, hereunto set my hand and seal.

N. S. TROWBRIDGE. [SEAL.]

Witness:
J. STERN.

STATE OF NEVADA, } ss:
County of Nye, }

On this 26th day of June, A. D. one thousand eight hundred and eighty-two, personally appeared before me, George Turin, a notary

public in and for the said county of Nye, N. S. Trowbridge, whose name is subscribed to the annexed instrument as the party thereto, personally known to me to be the same person described in
806 and who executed the said annexed instrument as a party thereto, and the said N. S. Trowbridge duly acknowledged to me that he executed the same freely and voluntarily and for the uses and purposes therein mentioned.

In witness whereof I have hereunto set my hand and
[SEAL.] affixed my official seal the day and year in this certificate first above written.

GEO. TURIN,
Notary Public.

Recorded at request of W. N. Granger June 28th, A. D. 1882, at 30 min. past 11 o'clock a. m.

M. R. DELANO,
Co. Recorder.

STATE OF NEVADA, } ss:
County of Nye, }

I, M. B. Delano, county recorder in and for the county of Nye, State of Nevada, do hereby certify that the foregoing are full, true, and correct copies of the within-named instruments as the same appear of record in Book B of Miscellany, at pages 138, 180, 208, 209, 315, 316, 317, and 342, Nye county, Nevada, records.

[RECORDER'S SEAL.] In witness whereof I have hereunto set my hand and seal this 8th day of Dec., 1885.

M. R. DELANO,
Co. Recorder, Nye County, Nevada.

807 STATE OF NEVADA, } ss:
County of Nye, }

I, W. F. Leon, county recorder in and for the county of Nye, State of Nevada, do hereby certify that the foregoing are full, true, and correct copies of the foregoing annexed instruments as the same appear of record in my office in Book B of Miscellany, on pages 138, 180, 208, 209, 315, 316, 317, and 342, Nye county, Nevada, records.

[L. S.] In witness whereof I have hereunto set my hand and affixed my official seal this 10th day of April, A. D. 1886.

W. F. LEON,
Co. Recorder.

Endorsed: Filed Nov. 1, 1886. T. J. Edwards, clerk.

808 DEFENDANT'S EX. No. 2. T. J. Edwards, Com'r.

[SEAL.] Copy.

Whereas I have this day obtained from J. E. Clayton, attorney for N. S. Trowbridge, of Tybo, Nevada, an option to purchase certain water rights at Hot Creek, Nye county, Nevada, and also certain

mining claims known as the "Empire and Richmond," "Bullion," "Crescent," "Bismark," and "Dexter" mines, in Hot Creek and Argenta mining districts, Nye county, Nevada; and whereas said option was secured by me for the benefit of the "New Philadelphia Silver Mining Company" in case the said company wished to avail themselves of the same: Now, therefore, for and in consideration of the sum of one dollar, the receipt whereof I hereby acknowledge, I hereby give, grant, and yield to the said company the option of purchasing said properties under the said agreement, provided the said company indemnify me against loss or expense in the premises, and provided that they faithfully perform all the stipulations of the said agreement.

(Signed) WM. G. SMITH.

New York, March 15th, 1879.

809 Copy.

Whereas N. S. Trowbridge, of Tybo, Nye county, Nevada, under belonging to Hon'ble J. T. Williams, as follows: Water rights and date of November 27, 1878, has bonded certain properties in Nevada mill site at Hot Creek, "Empire and Richmond" mines near Old Dominion cañon, "Bismark," "Dexter," "Crescent," and "Bullion" mines at Argenta; and whereas said Trowbridge has empowered me to dispose of the same:

Now, therefore, for and in consideration of the sum of one dollar and other valuable considerations, I hereby agree with Wm. G. Smith, of New York city, to give him the option of purchasing said properties under the bond on the following terms, viz: Five thousand dollars cash upon the legal transfer to him of the water rights, mill site, and 160 acres of land; five thousand dollars cash upon the legal transfer by patent to him of the "Empire" and "Richmond" mines; fifteen thousand dollars cash upon the legal transfer by patent to him of the "Dexter," "Bismark," "Bullion," and "Crescent" mines, together with five thousand shares of the present capital stock of the "New Philadelphia Silver Mining Company."

In case said Smith shall elect to organize a new company
810 with the above properties and a nominal capital stock of 500,000 dollars, then I am to receive five thousand shares of the stock of the new company in lieu of the stock of the "New Philadelphia Company," it being understood and agreed that I will use every effort to have included in this transfer the entire ownership of the hot springs, water rights, and ranch belonging to Mr. Williams and any other properties that can be secured or obtained from said Williams and others.

I agree to take charge of and superintend the management of said properties, erect the requisite reduction works, and become identified with the successful working of the same for the stated sum of five hundred dollars per month, and such further consideration in the future as said Smith shall deem equitable and just.

New York, March 15th, 1879.

(Signed) J. E. CLAYTON.

(Signed) ALFRED KIMBER.

STATE OF NEW YORK, } ss:
City and County of New York, }

Be it remembered that on this 9th day of December, A. D. 1879, before me, Charles Nettleton, a commissioner for the State of Nevada in New York, personally came before me Alfred Kimber,
811 subscribing witness to the foregoing instrument, to me personally known, — to me to be such subscribing witness to the above instrument, who, being by me duly sworn, did depose and say that he resides in New York city, New York; that he is personally acquainted with J. E. Clayton and knows him to be the same person described in and who signed, sealed, and executed the foregoing instrument for the uses and purposes therein mentioned; and that he, said Alfred Kimber, subscribed his name as a witness thereto.

(Signed) ALFRED KIMBER.

Subscribed in my presence and sworn to before me this 9th day of December, A. D. 1879.

In witness whereof I have hereunto set my hand and [SEAL.] affixed my official seal.

(Signed) CHARLES NETTLETON,
Commissioner for Nevada in New York,
No. 117 *Broadway, N. Y. City.*

STATE OF NEVADA, } ss:
County of Nye, }

I, George Ernst, recorder in and for said county, do hereby certify that the foregoing is a full, true, and correct copy of the instrument set forth as the same appears of record in my office.

In witness whereof I have hereunto set my hand and [SEAL.] affixed my official seal this 22d day of Decem'r, 1879.

(Signed) GEORGE ERNST,
Co. Recorder.

812 *Copy of Letter from J. E. Clayton to Hon'ble Joseph T. Williams.*

NEW YORK CITY, *May 19th*, 1879.

DEAR SIR: I expected to be in Hot Creek several weeks ago, but am unavoidably detained here. The "New Philadelphia Co." wish to know what progress has been made towards preparing the claims for application of patents and how much work has been done on each claim, &c. You will see by the terms of agreement that $5,000.00 is to be paid to you when you give a satisfactory title to the water right for milling and metal-urgical poposes (which means, of course, the exclusive right for those purposes as against every one except yourself for agricultural purposes) and the 160 acres of land adjoining your ranch south and southwest. $5,000.00 is to be paid as soon as patent papers are perfected for the "Empire" and "Richmond" claims, and $15,000.00 more when patent papers are perfected for the "Dexter," "Bismark," "Bullion," and "Crescent" claims near Argenta, and also 5,000 shares of the present capital

stock of the "New Philadelphia Silver Mining Company" of New York city. This is the only basis (patents) upon which mining properties can be sold here, and knowing as I do the history of mining titles and the litigation trumped up against claims that
813 are not patented I could not ask Eastern men to take any risk about titles. Their risks are large enough in supplying the capital necessary to prove the mines to the deep without taking any chances of older claims upsetting their titles to the mines.

The company have the money in their treasury, but are reluctant to order a mill until the titles are put beyond question by perfecting applications for patents at Eureka land office, and have the register's receipts that the papers are perfected ready to be sent to Washington. They do not require the patents to be actually issued before making the payments, but they do require the receipts from the land office that the papers on application have been perfected and ready to be forwarded to Washington before final payments are made.

I suggest that you have a deed made to the "New Philadelphia Silver Mining Co." of New York for the exclusive right to take and use the water from your ranch at any point below the hot spring most convenient for them, and the right of way to lay down pipes to carry the same to the mill sites to be used for milling and metal-
-urgical purposes; also a deed to the 160 acres of ground next
814 below and south of your ranch. Have the deed for the mill sites and water rights made out in proper legal form, with abstract of title to date, and deposit them with Paxton & Co., at Eureka, and they will be instructed to pay the $5,000.00 cash, provided the titles are in satisfactory shape for immediate record. With this money in hand the work of preparing the mining claims for patenting can be pushed forward rapidly to completion. You see the necessity for pushing the work on the mining claims, for upon that depends the time for the other payments. The "Empire" and "Richmond" claims can be got ready for application right away and the others soon after. I want the work done on ore so as to have as much value in sight for the work done as possible. Have the ore properly assorted and piled upon the dumps. This ore will be purchased by the company at a price covering the actual cost of the work and the expenses of getting patents. I wish you would carry out these suggestions without delay and telegraph me on receipt of this if it is satisfactory to you and how soon you can
815 have the deeds for the mill site and water rights at Paxton & Co.'s. The company will not order the mill until they hear something definite from you about the titles to the mill site and water rights. Please despatch me promptly to No. 31 Broad street, room 14, New York; also write me in full to same address.

Very truly, your friend,

(Signed) J. E. CLAYTON.

P. S.—I am busy getting up full plans, drawings, and specifications for the mill and other things for the company, but, as I said before, the company hesitate to order the mill until they know defi-

nitely whether you will give them the exclusive right to the water on your ranch for metal-urgical purposes, reserving to yourself all the water not so used for agricultural and domestic use only. This will give them the assurance that no other milling and mining company will be allowed to establish themselves on the same footing with themselves and compete with them in the business of ore reduction for the district; in other words, they want to be protected as far as possible against competition, so that they can make
816 your place the great business centre of the district and a profitable one for themselves.

(Initialed) J. E. C.

STATE OF NEW YORK, }
City and County of New York, } *ss:*

I, Charles Nettleton, a duly authorized commissioner for the State of Nevada, duly appointed, commissioned, and sworn, and dwelling in said city of New York, do hereby certify that I have this day carefully examined and compared the foregoing copies of certain instruments (3) with the originals thereof, with letter-press copy of the letter of which the foregoing purport to be copies, and after such examination and comparison I hereby further certify that the foregoing is a true and correct copy of the said original instruments and of the whole thereof.

In witness whereof I have hereunto set my hand and
[L. S.] affixed my official seal this 4th day of August, A. D. 1884.

CHARLES NETTLETON,
Commissioner for Nevada in New York,
115 & 117 *Broadway, N. Y. City.*

Filed Nov. 1, 1886.

T. J. EDWARDS, *Clerk.*

(Here follows diagram marked p. 817.)

817 DEFENDANT'S EX. NO. 3. T. J. E., Com'r.

Report of the New Philadelphia Silver Mining Company.

Offices, No. 33 Broad street, New York.

818 To the stockholders of the New Philadelphia Silver Mining Company:

GENTLEMEN: After a thorough investigation of our interests it became apparent to us that there were scientific and practical questions of importance to be considered. We have therefore taken counsel of the eminent mining engineer, J. E. Clayton, of Salt Lake City, Utah, whose preliminary report is hereto annexed.

Our water supply may be insufficient for extensive reduction works at Argenta, but at Hot Creek, a few miles distant, is found the largest supply of available water which may virtually control the whole district so far as reduction wor-s are concerned. It

therefore became not only important to our success but of great pecuniary interest to us to acquire those water rights.

Mr. Clayton reported to us that Mr. Williams, the owner of the water rights at Hot Creek, also owned valuable mining properties that had been profitably worked until the mill was destroyed
819 by fire. It is natural that the water rights are as vital to Mr. Williams' mining interest as to our mining interests, and could not be segregated therefrom. Mr. Williams' mining properties, as may be seen from Mr. Clayton's report, are of great value, and the acquisition of these properties added to our own insures a double basis of ore supply for our reduction works, thereby securing steady and profitable work.

Mr. Clayton, who is known to be extremely conservative in his views and representations, estimates that we can be sure of a supply of 30 tons of ore daily that will give an average yield of $60 per ton, that supply being necessary to insure the steady treatment of 20 tons daily and the accumulation of a large stock of ore.

Description of properties.

The property upon which this company was incorporated consisted of the "New Philadelphia lode," 1,200 feet in length and 200 feet in width, covered by United States patent No. 37. The company has since acquired the following properties, viz:

Mining locations.

"Lowden mine"	length	1,200	feet.
"Hercules mine"	"	600	"
"N. E. Paine mine"	"	1,500	"
"J. T. Rook mine"	"	1,200	"
820 "Lulu mine"	"	1,500	"
Total		6,000	"

Building site.

Rattlesnake cañon, survey No. 935	124.30	acres.

Town site.

Plateau land, survey No. 946	160	acres.

Woodland.

Survey No. 937	160	acres.
" 938	160	"
" 944	160	"
" 945	160	"
Total	640	acres.

It is proposed now to purchase the following properties, for reasons hereinafter stated, viz:

Hot Creek springs and water rights.

These valuable rights are in Hot Creek cañon. Possession of this water gives perfect control of all mill, metallurgical, or reduction works for the whole district of ten to fifteen miles square, and shuts out all competitive or rival works.

Mining locations.

Richmond silver mine	length	--	1,500	feet.
Empire	"	--	1,500	"
Crescent	"	--	1,500	"
Dexter	"	--	1,500	"
Bullion	"	--	1,500	"
821 Bismark	"	--	1,500	"
Total			9,000	"

Mill site.

Property of Mr. Williams, situated at Hot Creek, Nye county, Nevada, 160 acres.

Extracts from Report of Prof. J. E. Clayton.

General description of the district.

Route or approach.

Hot Creek mining district is situated in the central portion of the State of Nevada, about 85 miles south of Eureka and 175 miles south of Palisade, on the C. P. R. R. The principal line of approach is from Palisade to Eureka by the narrow-*guage* railroad (90 miles), thence by a good stage road to Hot Creek, 85 miles. A daily stage line is run from Eureka by Hot Creek, thence south 14 miles to Tybo, thence westerly 35 miles to Belmont, the county-seat of Nye county.

Physical features.

These are made up mainly of rough, barren mountains and equally barren valleys between them, covered in most part with sage brush and scattering bunch grass. The mountain ranges have also a stunted growth of pinon pine and cedar and juniper
822 covering the most favorable slopes and benches where the soil has accumulated to sufficient depth to sustain forest growth. In most part, however, the mountain slopes and cliffs are bare rock masses, presenting evidence of violent distortions and upheavals during some past age of great volcanic activity. The prevailing types of the plutonic rocks are basalts, traychites, rhyolites, and porphyries. These cut up through and overlie the old crystalline beds of the Cambrian, Silurian, Devonian, and Carboniferous ages. These beds are made up in most part of quartzite, shale, and limestone, all greatly distorted and broken by the eruptive or volcanic rocks. The Hot Creek range is a prolongation south of

the Eureka or Diamond range of mountains that trend south or a little west of south through the central and southern part of the State. Leaving Eureka, you cross the range to the east side, thence along the east base to Hot Creek station. Here a large gorge or cañon issues from the N. W., cutting a deep gap or pass to the summit, called "Hot Creek pass."

Hot Creek springs.

In the lower part of this cañon is a very remarkable series of hot springs issuing from under immense beds of traychite and basalt. The volume of water fills a ditch three feet wide by one to
823 two feet deep, flowing at an average rate of two feet per second. This water spreads over a flat in the mouth of a cañon one hundred to two hundred yards wide by two miles long, forming meadows and farming lands of about three hundred acres, extending into the edge of the valley. With the exception of a few small springs in the mountains west and southwest of it, this is the only available water supply for the Hot Creek and Argenta mining districts.

Mines.

The mines extend from this Hot Creek gorge south along the east flank of the range a distance of 6 or 8 miles. There are a number of deep gorges cutting into the east flank of the mountain range south of Hot Creek cañon. The first is in the south end and empties into the valley two miles south of Hot Creek springs. Two miles further south Old Dominion cañon comes in, and three miles further south Rattlesnake cañon makes a deep, long cut into the range. The two latter have wagon roads through them and across the range to the west. In addition to these three principal cañons that cut through the district from east to west there are a number of steep ravines that cut into the face of the mountains, but
824 do not entirely cut across the mineral belt; hence they can only be used as lines of approach to mines along the "foothills" and east face of the range.

The geological formations in which the mines are formed are porphyry, quartzite, limestones, and calcareous schists, all greatly altered or metamorphozed by heat, chemical action, and mechanical displacements. As a rule the ores do not occur in the porphyries, but in the quartzite and limestone near the contact lines of the porphyry dikes. Some instances may be observed where small seams of ore penetrated the porphyries. The largest and best ore bodies are found in the limestone and quartzite formations. The ores occur as chlorides and sulphides of silver, the chlorides being the most abundant ore. In a few places rich ores of silver occur, as fahlertz and stetefeldite (a combination of silver, copper, antimony, and sulphur). As a rule the ores do not occur in "fissure veins," but as irregular deposits, "chimneys," "ore pipes," "gash veins," and "impregnations" in certain zones or belts of country rock that trend N. and S. parallel with the axis of upheaval. There are, however, a few exceptions to this rule occurring as "true fissure veins," cutting the

country rock nearly at right angles to the line of upheaval or nearly E. and W.

825 New Philadelphia mine.

Of the properties belonging to this company the N. P. mine has received the most attention. It is covered by U. S. patent. The works and developments are as follows: Hoisting and pumping works of strong and powerful construction have been erected. The hoisting engine has capacity for 3,000 lbs. 200 feet per minute. The pump ("Cornish lift") has a capacity of 300,000 gallons in twenty-four hours. The construction has been done in a thorough, workmanlike manner. The shaft has been substantially timbered and all preparations made for mining on a very extensive scale. The mine developments consist of the incline discovery shaft, 40 feet, at which depth the main perpendicular shaft intersects, and has a total depth of 175 feet.

The main shaft is divided into two compartments, the hoisting and the pumping. There are three levels at the respective depths of 40, 52, and 80 feet. A fourth level is about to be run in a southerly direction to intersect the ore body. The first and second levels are now being connected by a winze, with a view to determine the extent of the rich ore on the first level, samples from which assay upwards of $1,000 per ton. The main shaft penetrates the
826 ore body from a depth of 40 feet to 80 feet, though mostly of a low grade. The third or 80-foot level is run in on the course of the vein a distance of 37 feet, and a "cross-cut" from the "foot wall" has been made 17 feet without striking the "hanging wall."

Four tons of assorted ore from this mine, milled at Belmont, gave $207 per ton assay value, and 12 tons, milled at the "Old Dominion" mill at Hot Creek, gave $178 per ton.

At Argenta, Rattlesnake cañon, the N. P. S. Mining Co. has constructed miners' cabins, boarding-house, and stables. A substantial wood road has been constructed from the cañon to the engine-house with one fixed grade to it, and by it hauling one mile is saved.

Mining timbers are obtained from the company's own surveyed land (640 acres), and also cord wood. There are about 500 cords of wood on hand. The cañon has been surveyed for mining purposes, and on the plateau at the mouth of the cañon 160 acres taken up for a town site.

Surveys and full details at the office of the company, 33 Broad street.

Very respectfully yours,

GEORGE D. HYDE, *President.*

New York, March 15, 1879.

827 *Report by Professor J. E. Clayton.*

"Richmond" and "Empire" mines (Old Dominion), "Bismark," "Bullion," "Crescent," and "Dexter."

Richmond and Empire mines.

These mines, situated in Old Dominion cañon, are the most important of the six properties offered by Mr. Williams. They are virtually one mine, and as such situated on the north side of the cañon. It is the same zone or belt of limestone as the "Mountain View," but is much larger and better defined as an ore body. There has been $8,000 or $10,000 expended on its exploration, consisting of an open cut across the ore about 40 feet square by 20 feet deep on the upper side; also a winze sunk 80 feet to connect with a tunnel run under the ore body from the ravine. This tunnel should be run 100 feet further to cut the ore chute on its dip to the west, after which the quarrying and delivering of the ore can be done at much less expense. The ore body in this mine extends across a belt of lime and quartz about 40 feet wide and at least 100 feet in length on the line of outcrop. It is a large, strong "chimney" of ore of all grades, from $10 up to $300 per ton. The ore taken out of the open cut above mentioned gave a yield in silver of over $75,000.

828 The mine was located by the Hon. Joseph T. Williams about twelve years ago. They managed to get money enough to build a mill at Hot Creek, and commenced working the ore and took out $75,000 in bullion in a few months. The mill burned down and left them barely able to pay their indebtedness. The country was then new, the cost of machinery and other improvements was enormous, and they failed to get means to resume their work. One after another the partners abandoned their interest in the mine, and it all fell into the hands of J. T. Williams, who is now the sole owner.

There are two or three other "outcrops" of ore on this claim which look very promising, but they have not been opened. Taken altogether, I consider this mine a very promising property.

The average yield of 131 tons of ore from these mines, as worked at the "Old Dominion" mill, was $140 per ton. The other four claims, situated near the "New Philadelphia mine," at Argenta, show outcroppings of good ore in "chimneys" or "ore chutes" of very promising character. The developments on these properties consist of open cuts on the croppings. I think they will prove to be a valuable set of claims when they are properly opened. Tests made of the croppings show values ranging from $20 to $300 per ton. I have no doubt but large quantities of ore can be

829 obtained from them that will give an average yield of $40 to $60 per ton, which is a very profitable grade of ore to work.

The mining properties acquired from Mr. Williams are fully capable of supplying 20 tons of ore per day; that will give an average yield of $60 per ton. Some portions of these mines will give ores worth from $100 to $300 per ton, but the very rich ores are always exceptional and uncertain in quantity; hence our esti-

mates must be based upon the medium and low-grade ores, leaving the rich ore to drop in during the regular process of legitimate working of the mines.

There are probably twenty claims in the district besides those before named that carry ores rich enough to work with profit, and further explorations may and probably will develop other valuable claims, and these properties strengthen the basis for the proposed reduction works.

These mines, though not owned by the New Philadelphia Silver Mining Co., must send their ores to that company's mill, because for lack of water they cannot set up reduction works of their own. The charge for custom milling is so profitable that still larger profits
830 can be made by milling or purchasing these outside rich ores, as is done on a large scale in Eureka by the "Richmond" and "Eureka Consolidated Mining Companies."

General remarks.

The New Philadelphia Silver Mining Company now has what I consider as a whole to be very valuable mining properties, capable of sustaining continuously extensive reduction works, insuring steady and profitable work.

The reduction works proposed will encourage the development of the other mines by the purchase of ores of high grade from the owners, which will give time for the economical development of its own mines and accumulation of large quantities of ore ahead.

By securing the only available water rights, in the edge of the valley, near and opposite the central part of the district, they have virtually controlled the reduction of ores for the entire district, and that gives the best guarantee possible for building up a safe, steady, and profitable mining business. These conditions and advantages being secured, I will briefly rehearse what I conceive to be the legitimate requirements of a mining enterprise:

1st. Ore enough of good paying quality to keep the reduction works constantly employed.

831 2nd. The capacity of the mines equal to double the capacity of the reduction works.

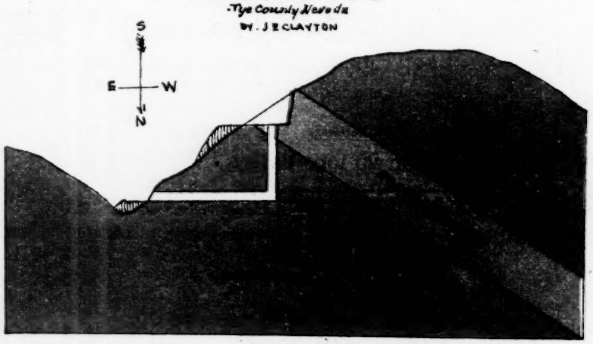
3rd. A good central position and ample supply of water for the reduction works and centre for general business.

4th. Reduction works suitable for handling every variety of good ore in the surrounding country.

Applying these facts to the N. P. S. Mining Co.'s properties, and taking into account the present status of development, I would recommend the erection of machinery capable of reducing 20 to 30 tons of ore per day, but so planned that it can be increased as the development of the district demands. The machinery should be strong and well adapted to the work required, free from all ornament and needless expense. Convenience, durability, and economy should govern the outlay in every department of the enterprise. This being the policy of the N. P. S. Mining Co., I have no hesitation in saying that I recommend it as a safe and legitimate mining enter-

no. 157.
Williams } p. 832
U. States

NEW PHILADELPHIA SILVER MINING CO
RICHMOND & EMPIRE MINES
Tye County Nevada
BY. J E CLAYTON



prise that will return good dividends to the stockholders provided the management be intelligent, business-like, and economical.

In conclusion, I will add the following information in refer-
832 ence to "ore chutes" or "pipes" of ore. The accepted theory is that the ores of the precious metals were derived from deep-seated sources, and were driven up towards the surface by the heat of the plutonic rocks. The mineralized gases and solutions escaped through fissures and broken portions of the overlying country rock; hence in many localities the form of the ore deposits is very irregular, conforming in all cases to the shape of the vents through which the heated gases arose to the surface on the lines of the least resistance. It therefore follows that "pipe veins" and irregular "chimneys" have the same origin as true "fissure veins" and are just as likely to extend to the deep, the only difference being in the form of the deposit.

It will be seen by reference to the geological section that the Empire and Richmond reef dips west toward the great porphyry ridge about 2,000 feet distant.

(Here follows diagram marked p. 832.)

833 The lines of contact with the porphyry is not sufficiently exposed to enable me to determine whether the reef is cut off in the deep by the porphyry or is overlaid by it. In either case the geological indications are that we can rely upon a continuity of the reefs and ore chutes to a depth of 2,000 feet or more, and if the porphyry proves to be an "overflow" its extent in depth will be practically beyond the reach of modern appliances to exhaust it.

The true value of any mine, whatever the form it may have, must be measured by the quantity and richness of its ores.

Very respectfully yours, J. E. CLAYTON.

New York, March 15, 1879.

New Philadelphia Silver Mining Company.

Capital stock, $1,500,000, in 150,000 shares of $10 each; stock unassessable.

Estimates.

Profit on 25 tons daily.

Tons. Days. Tons.	
$25 \times 300 = 7{,}500$, at $60 per ton	$450,000
Less 40 per cent. mining, milling, &c.	180,000
	$270,000

Equal to 36 p. c. per annum on stock at $5 per share.

Profit on 35 tons daily.

834 $35 \times 300 = 10{,}500$, at $60 per ton	$630,000
Less 40 per cent. for mining, milling, &c.	252,000
	$378,000

Equal to 50 p. c. per annum on stock at $5 per share.
131 tons Empire ore milled, gross, $140 per ton.
On this basis—

30 tons daily × 300 = 9,000, at $140	$1,260,000
Less 40 per cent. for mining, milling, &c.	504,000
	$756,000

Equal to 100 p. c. per annum on stock at $5 per share.
(Filed Nov. 1, 1886.

T. J. EDWARDS, *Clerk.*)

835 DEF'T'S EX. No. 7. T. J. Edwards, Com'r.

This indenture, made the second day of April, in the year of our Lord one thousand eight hundred and eighty-six, between H. B. Campbell, of the county of Nye, State of Nevada, the party of the first part, and Joseph T. Williams, of the same county and State, the party of the second part, witnesseth:

That the said party of the first part, for and in consideration of the sum of one dollar, lawful money of the United States of America, to him in hand paid by the said party of the second part, the receipt whereof is hereby acknowledged, has granted, bargained, sold, remised, released, and forever quitclaimed, and by these presents does grant, bargain, sell, remise, release, and forever quitclaim, unto the said party of the second part and to his heirs and assigns forever all and every right, title, and interest in and to all the real property described in that certain conveyance to the said party of the first part, dated the ninth day of August, eighteen hundred and seventy-five, executed by the said party of the second part
836 and his wife, Sophie Williams, and recorded August 16, A. D. 1875, in Book "H" of Deeds, on pages 553 & 554, Nye county, Nevada, records. The said party of the first part excepts, excludes, and reserves from this conveyance all the land and improvements described in said conveyance of Aug. 9th, A. D. 1875, that are now embraced in the northeast quarter of the northeast quarter of section thirty-three and the west half of the northwest quarter of section thirty-four, in township eight north, of range fifty east, Mount Diablo base and meridian—

Together with the privileges and franchises thereto incident, appendant, or appurtenant or therewith usually had and enjoyed, and also all and singular the tenements, hereditaments, and appurtenances thereto belonging or in anywise appertaining, and the rents, issues, and profits thereof, and also all the estate, right, title, interest, property, possession, claim, and demand whatsoever, as well in law as in equity, of the said party of the first part of, in, or to the said premises and every part and parcel thereof, with the appurtenances; to have and to hold all and singular the said prem-
837 ises, together with the appurtenances and privileges thereto incident, unto the said party of the second part, his heirs and assigns forever.

In witness whereof the said party of the first part has hereunto set his hand and seal the day and year first above written.

The word dollar interlined on page one before signing.

H. B. CAMPBELL. [SEAL.]

STATE OF NEVADA, } ss:
County of Nye, }

On this 3d day of April, A. D. one thousand eight hundred and eighty-six, before me, W. S. Bryden, county clerk and *ex officio* clerk of the district court of the fifth judicial district in and for Nye county, personally appeared H. B. Campbell, known to me to be the person named in the annexed instrument as party thereto and therein described as the party executing the same, and the said H. B. Campbell acknowledged to me that he executed the same freely and voluntarily and for the uses and purposes therein mentioned.

838 In witness whereof I have hereunto set my hand and affixed the seal of said court the day and year in this certificate last above written.

[L. S.]

W. S. BRYDEN,
County Clerk.

(Endorsed:) Recorded, at request of M. W. Esser, in Book "L" of Deeds, page- 619 & 620, July 5, 1886, at 9.20 o'clock a. m., records Nye county, Nevada. W. T. Leon, Co. recorder. Filed July 5th, 1886, 9.20 a. m. W. T. Leon, Co. recorder. Filed Nov. 1, 1886. T. J. Edwards, clerk.

839 *Pl'ff's Testimony in Rebuttal.*

CARSON, *July 10th*, 1886.

Pursuant to notice, the taking of plaintiff's testimony in rebuttal was commenced, T. Coffin and J. D. Torreyson, Esquires, appearing as the solicitors for complainant, Messrs. T. W. Healy and R. M. Clarke appearing for defendant.

Mr. RICHARD GLUYAS, a witness introduced by solicitors for complainant, having been first duly sworn, testified as follows:

I am the Richard Gluyas referred to in Mr. Williams' testimony as the agent of Matthiessen and Ward. I have examined the exhibits offered.

Question. Have you in your possession certified copies of the bonds and options, powers of attorney, etc., showing the history of the bonding of certain mines once bonded by Williams to N. S. Trowbridge?

Answer. Yes; the full record of everything concerning it in that transaction as found on the records in Nye county, Nevada, except that the option of Clayton to Smith was twice recorded and

840 I have one copy. These are the certified copies that I hold in my hand that I got from the recorder in Nye county.

1st is the bond from Jos. T. Williams to N. S. Trowbridge. 2d is an extension of that bond from Jos. T. Williams to N. S. Trow-

bridge. There could be no power of attorney found of record from N. S. Trowbridge to J. E. Clayton by the records of Nye county. 3d is the revocation of the power of attorney set out in the revocation that Trowbridge had previously granted a power of attorney to the said Clayton. 4th is the agreement between Clayton and W. G. Smith granting an option to W. G. Smith to purchase the mines named in the bond from Williams to Trowbridge. 5th is where Henry B. Stanton, receiver, transfers what interest W. G. Smith or what interest the New Philadelphia Company had in such papers to Matthiessen and Ward. 6th is W. G. Smith transferring the option to the New Philadelphia Silver Mining Co. 7th is Henry B. Stanton transferring what Smith had transferred to the
841 New Philadelphia Co. to Matthiessen and Ward. 8th is an agreement of N. S. Trowbridge to J. T. Williams about a forfeiture of moneys that may have been paid to Williams under the Trowbridge and Williams bonds and agreements. This document is said to have been made on the 9th day of June, 1879, but it was not acknowledged until the 26th day of June, 1882, and recorded on the 28th day of June, same year. 9th is the certificate of the county recorder of Nye county.

Defendant's attorney objects to the answer, "Said to have been made on the 9th day of June, 1879," as being hearsay, and that the document itself upon its face shows that it was made on that day and bears that date. This objection refers to the agreement of N. S. Trowbridge to Jos. T. Williams and enumerated No. 8 herein.

Plaintiffs here offer in evidence all the above-named documents, which are joined together and marked Plaintiffs' Exhibit X.

In these documents just offered in evidence are named the
842 mining claims of the Richmond, Empire, Crescent, Bullion, Dexter, and Bismark, making six mines in all.

The New Philadelphia Silver Mining Company nor Matthiessen and Ward, their successors, never owned nor claimed these mining claims nor never received one dollar's benefit from them, but, on the contrary, the New Philadelphia Mining Co., working them under the option transferred to them by Smith, expended nearly $16,000 on those mining claims without one dollar's return. About January, 1880, Williams began to make some trouble with the New Philadelphia Mining Co. at Hot Creek, I then being their representative on the ground. Williams jumped over the intermediate steps between the company and himself, which was Trowbridge and Clayton, and came to me about these trouble affairs. He warned me, I believe, not to take any ores from those mines. I transmitted the message to the company in New York, and in February, 1880, I had orders to pay off all the men on the claims owned by the said
843 Williams and to stop work on the said claims, which I did, and from that time the New Philadelphia Silver Mining Co. nor their successors have had anything to do with the said six mining claims. Those claims was situated at what was then known as the Argenta mining district, but now a part of Hot Creek mining district, having been consolidated into one district. I am now the

mining recorder of Hot Creek district and have the only mining record of the said Argenta mining district, and I have the book before me. On page 13 I find the record of the Richmond Silver Mining Company. On page 14 I find the Empire Silver Mining Company of record. On page 16 I find the Crescent Silver Mining Company of record. On page 17 I find the Bullion Silver Mining Company of record. On page 18 I find the Dexter Silver Mining Company of record. On page 19 I find the Bismark Silver Mining Company of record.

Quest. Are these the same mines bonded by J. T. Williams
844 to N. S. Trowbridge on November 27, 1878, as shown by Defendant's Exhibit No. 1 and Complainant's Exhibit X?

Ans. I have been on the ground and have read the records, and they are the records of those six very same mining claims.

Quest. When were these several six mining claims, respectively, located and recorded, as shown by the record book in your hands, and by whom located?

Ans. The Richmond, located December 4, 1878, by J. D. Ernst, recorded December 4, 1878; the Empire, located December 4, 1878, by Joseph T. Williams, recorded December 4, 1878; the Crescent, located December 16, 1878, by Joseph Williams, recorded 16 December, 1878; the Bullion, located December 16, 1878, by Jos. Williams, recorded December 16, 1878; the Dexter, located December 16, 1878, by Jos. Williams, recorded December 16, 1878; the Bismark, located December 16, 1878, by Jos. Williams, recorded December 16, 1878.

Q. Who was the recorder at that time?

A. Alfred Kimble was the recorder and H. Andrehsen his deputy. These records are signed by H. Andrehsen, his deputy.

845 Plaintiffs here offer in evidence the records of these locations, pages 13, 14, 16, 17, 18, 19, and ask the commissioner to make certified copies of these claims, which are attached together and marked Complainant's Exhibit Y.

Solicitor for defendant objects to the evidence offered on pages 13, 14, 16, 17, 18, and 19 as the records of the locations of the mining claims named herein as incompetent, irrelevant, and immaterial; and, further, that there is no question of title to the mines involved in this litigation.

Q. Do you know and can you state how the six mining claims before mentioned were bonded by Williams to Trowbridge before Williams owned them or located them?

Solicitor for defendant objects to the question on the ground that it is not the best evidence; that the bond itself is admitted in evidence.

A. I know from talking with Clayton, Trowbridge, & Smith, a little from Mr. Williams and from Mr. Mason, clerk of the U. S.
846 court of New York at that time: From Clayton, that he came down into Hot Creek in the fall of 1878 to report on some mining claims owned by one Kellogg and others in Hot Creek

mining district, and that the said claims were bonded or about to be bonded to N. S. Trowbridge, the son-in-law of said Clayton, being the Trowbridge mentioned in the Williams bond. Clayton was not then in the employ, nor for several months afterwards, to wit, March, 1879, of the New Philadelphia Mining Company, but came down in the interests of Mr. Mason, above spoken of, to report to him of what he saw in the Hot Creek mining district. When Clayton reported on these Kellogg mines Clayton decided that they were not sufficient or large enough to compose the mining property proposed to be got up by him and Mr. Mason for to be sold in the New York market. Mr. Clayton introduced in his report to Mason a report of these six mining claims as named in the bond from Williams to Trowbridge. Mr. Mason, after trying to sell it or form a new company in New York, decided to introduce Clayton to the treas-
847 urer, W. G. Smith, of the New Philadelphia Company of New York, which introduction led to the option and the engagement of Clayton to act as manager of the New Philadelphia Mining Company at a salary of $500 a month; before that he had no connection with the company. Clayton also told me that fifty per cent. of the moneys mentioned in the bond of Williams to Trowbridge, or any other sums of money that might be collected for the sale of the property, was to be divided between the said Mason, Trowbridge, and Clayton, to be divided *pro rata* amongst themselves. Williams in 1879 sold to the New Philadelphia Silver Mining Co. a mill site and water right for $5,000, and Williams claiming that it was part of that contract and the New Philadelphia Mining Company claiming it to be a clear deed entirely between said Williams and the company. Clayton, Mason, & Trowbridge all three told me that Williams did not treat it as part of the contract because he never divided the $5,000 between them. When I found
848 out on the record book that these mines were located subsequent to the granting of that bond I went and said to Trowbridge, "Is it possible that you took a bond for $25,000 to be transferred to other parties in New York or any other strangers without investigating or having investigated the titles of the properties that you bonded," at the same time telling him that the property had no existence of record at the time it was bonded. Trowbridge said, "I have nothing at all to do with it; it was between Williams and Clayton—an entire transaction between them—and I was to get $5,000 for simply allowing my name to be used in the transaction, and I took no notice of records and was never on the grounds," and that he, Trowbridge, put up the money for Clayton's expenses in the matter. Trowbridge also made a remark at the time that it certainly let him out to any responsibility with Williams if Williams bonded him the property before he located it. From Mr. Smith I learned in 1880, on my going to New York, that he consid-
849 ered the transaction between him and Clayton nothing but an option on his part to take the property from Clayton, as stated in the option. Smith also said, alluding to the time Williams warned me about taking ore from the mines, "What is the matter that Williams is troubling the company out there; we, directly,

have certainly nothing to do with Williams, and if Williams is dissatisfied let him go to Trowbridge, the man to whom he bonded the property, and let Trowbridge go to the man Clayton, from whom I got the option, and let the option show for itself for what I am bound to Clayton," at the same time stating that he only considered it an option. Mr. Mason told me he had $2,500 coming from the arrangement——

(Solicitor for defendant objects to the foregoing answer on the ground that it attempts to explain or modify a written instrument—the bond; that the bond itself is its own and best explanation.)

Neither Mr. Clayton nor Mr. Trowbridge were acting for the New Philadelphia Mining Co. before March, 1879, and
850 after March, 1879, only Mr. Clayton. He was manager and general superintendent up to December, 1879.

Q. Did you ever offer Mr. Williams $10,000 to settle this matter or did you ever offer him $500 if he would give Matthiessen and Ward a new bond or contract to purchase the property within 30 days?

A. No; first to both sides of the question. When I was in New York in the winter 1880 and 1881 W. H. Davis, who I left in charge of the New Philadelphia silver mining property as watchman, and who was boarding with and a great friend of Williams, wrote me that Williams would throw Clayton and Trowbridge overboard and take $10,000 for the six mining claims, and perfecting title to any other properties that might be opened. I laid this proposition before the members of the old company; the old company at this time was in litigation with Matthiessen and Ward and the people of New York. The old company owed considerable money out in Nevada, the principal part of which was debts I had contracted as
851 their agent, and which I wanted to pay to the working men and others by any honest means in my power. I saw that the old company were utterly insolvent and allowed me to be in New York six months for their own interests at my own expense. In this state of affairs I called on Mr. Matthiesson at his place of business and laid before him the hardships of the creditors in the State of Nevada, being mostly poor men. This resulted in Matthiesson and Ward agreeing to pay all the debts in Nevada, if they could be properly secured. Their legal advisers in New York advised them to have those debts put in the form of judgments against the company, and for Matthiesson and Ward to pay those judgments—that is, to buy the property at sheriff's sale on the execution—and I resigned my position to take place on the last day of January, 1881, and became, on the first of February, 1881, the agent of Matthiesson and Ward in Nevada to see to the proper carrying out of the above arrangements. In my conversations with Matthiesson and Ward I also spoke to them about
852 this $10,000 proposition of Williams to Davis. They told me to proceed to Nevada and they would let me know in the future about that $10,000 business. I received a telegram after I got in Nevada, some time in February, from either Matthiesson or

Ward authorizing me not to make a proposition, but to see Williams about a proposition that was made from Williams to them. I awaited Mr. Williams' return from Carson, early in March, and spoke to him on this proposition—wanting him to make it again to me, as Davis' business was simply a message. Williams acknowledged the proposition, but added to it, I think, $2,300, claiming that his expenses that he had laid out in securing the patents to the claims before mentioned, and that the money was laid out at Mr. Clayton's instigation.

I, knowing that there was no great anxiety to put even $10,000 in, advised Williams to take the $10,000 and settle everything up by giving clear deeds to everything in question and told
853 him plainly that I would not advise Matthiessen and Ward to pay the said $2,300 extra, but that I would send on any message that he had to send them. I sent on to Mathiessen & Ward this proposition of Williams', and in the course of a short time I received a telegram authorizing me to offer Williams $500 to bind himself for, I think, 60 days and to leave this question of $2,300 to J. E. Clayton, the very man Williams claimed authorized him to make the expenditure. Williams refused to leave the question to Clayton, and that was all I know about any $500 offer.

Q. Did Mr. Williams offer to submit his rights, as he claimed them, to arbitration before any three good business men or district judges in the State, or did he offer to submit them in particular to Thos. Wren, of Eureka?

A. In April, 1881, Mr. Williams told me to tell Matthiesson & Ward that he would leave the question to arbitration of three district judges, each side to choose one and the two judges so
854 chosen to choose the third. Mr. Williams called on me just after I had written and sent off that message and said that he required Clayton's ideas, Trowbridge's ideas, and his own ideas on the construction of the papers to be given to the arbitrators, as well as the records. This I considered a complete backdown from the proposition to arbitrate, and nothing more has been said since that time between Mr. Williams and myself as regards arbitration, and especially nothing as regards Mr. Wren as an arbitrator.

The $5,000 which Mr. Williams received from the company for the mill site and water rights—I have always understood from him and Trowbridge that he took a mortgage on Barnes' ranch, in Nye county, as the mortgage was dated a few days subsequent to the date of the check that paid for the deed of July, 1879. I made diligent inquiry and never found that Mr. Williams did any work on the mining claims, with the exception of a little work done by one man named William Bond. The period over which
855 this inquiry extended was from the time of the location of the claims down to the time of Williams procuring the patents for them.

Q. Was part of the consideration for the mill site, water rights, and these mines to be 5,000 shares of the capital stock of the New Philadelphia Silver Mining Company?

A. No; not as I understand it, because Clayton told me and Smith told me that 5,000 shares was a transaction between Clayton and Smith alone, and was a bonus to Clayton on his becoming superintendent of the company, and that Williams had no rights in the transaction whatever.

Q. Was there any ore of any value taken out of these mines since the New Philadelphia Mining Company or Matthiesson and Ward came into possession of it by either the above-named company or parties?

A. In the expenditure of the $16,000 testified to above the New Philadelphia Co. took out, I should judge, some 250 tons—it never was weighed—of ore of a low grade, which became the property of Mr. Williams after February, 1880, when the claims were abandoned by the said company, and which Mr. Williams sorted down and at different times sold small quantities at Eureka. Matthiesson & Ward never took a pound of ore out of any of the mining claims or worked a single day on them, and I have never considered that I, as agent of either of the parties, have had anything whatever to do with the mines since February, 1880.

856

Q. What do you know in regard to Mr. Williams having promised to relinquish his desert-land entry No. 158 in favor of Mathiesson & Ward?

A. In the latter part of March or the beginning of April, 1882, I was down just a little southeast of Williams' dwelling searching for the northwest corner of the land in controversy in this case. Mr. Williams came out of his house and showed me an iron bar which he had had driven into the place where he said the corner was, and asked me what I wanted to find the boundary for. This led to a conversation. Williams said, "I do not want to have any trouble with Matthiesson and Ward," telling me that if I would pledge my word that he could have five acres of the land in controversy, which was near his house, that he would relinquish the desert-land entry in the favor of Matthiesson & Ward. I told him I could not pledge my word to that, because I could not compel them to deed the five acres, but that I would use my best endeavors to get the five acres for him, and that I would send on the proposition. In the course of time I got the telegram from Mr. Matthiesson instructing me to ask Mr. Williams to relinquish the land without stipulation or unconditional, I am not certain which. I took the telegram and showed it to Mr. Williams in his own house. He said he would not do it. I turned to leave and told him I would send on his answer. Williams followed me and took me over to his stable which is across the road from his house, and we had a conversation in which he wanted me to sign certain stipulations covering all that he had ever claimed against the New Philadelphia Silver Mining Co., and that he then would relinquish the desert-land entry. I refused to enter into any such stipulations, but told him that I would sign a paper simply stating that the relinquishment was made at the request of Matthiesson and Ward. Williams then accepted my proposition, and said that he would send to George

857

858

Ernst, his brother-in-law, who is deputy U. S. mineral surveyor, and have Ernst make out the relinquishments, as he had the blanks over there, and that he, Williams, would sign it and send it to Eureka to the local land office.

I telegraphed this promise to either Matthiesson or Ward. Two or three weeks after this Mr. Williams was working in his garden just opposite where I am living. I went over and asked him if he had kept the above promise. He told me no; that Geo. Ernst had advised him there was plenty of time, as there had been some
859 extension of time made for desert-land entries before Congress when they could be left open. I then urged on him his promise to me, and asked him if Geo. Ernst owned him so as to cause him to break his promise. He said no, and spoke very angry about Geo. Ernst, and said that he would send to the land office in Eureka and obtain the proper blanks for filing the relinquishment to the desert-land entry, and distinctly promising to relinquish it if I would sign the paper I proposed; that it was done at the request of Matthiesson & Ward; no other stipulation. A few days or — week, which brought around the 13th day of May, 1882, I left Hot Creek for Eureka to get Mr. Wren's opinion on the Donahoe bond. On the 19th day of May, 1882, I met Mr. Williams at the post office in Eureka, I in the meantime having found out that Mr. Williams had not kept up to his promise by relinquishing the desert-land entry. Mr. Williams in the meantime had had a large paper drawn up combining, as I believe, all the claims that he had ever had against the New Philadelphia Silver Min-
860 ing Co. and wanted me to sign it before he would make the relinquishment. I considered this an entire breach of promise and refused. I left Eureka the morning of the 20th, and between that and the 24th received a letter from Abbott and Fuller, in which was the copy of an enquiry which they had addressed to Mr. Wren asking if Mr. Williams had relinquished the desert-land entry. I went to Mr. Williams on the 24th of May and asked him if he had done so. He told me no. I found out afterwards that it had been relinquished on the 20th. From that time to this I have never spoken to Mr. Williams about the mill site or desert-land entry and very little on any subject.

Q. Did you ever have any conversation with Mr. Williams to the effect that he was to relinquish his desert-land entry and he to enter the land through the State or any other way?

A. Never. All the coversations was that he was to relinquish in Matthiesson & Ward's favor and they were to enter.

861 Q. Have you ever boasted openly, time and again or at all or in any way, that your company was rich and had influence in Washington, and that it would annoy Mr. Williams with lawsuits and break him up and eventually get what he had, and that it was only a matter of time before these things came to pass?

A. I never did, and I defy Mr. Williams to bring any one but himself that will say so.

Q. Did you procure the rehearing on Mr. Williams' homestead

claim by procuring false affidavits which you sent to Washington for that purpose?

A. No. I procured some of the affidavits that was sent to Washington to obtain that rehearing, and each of the witnesses testified in regards to their own affidavits for a period of eight weeks in Eureka, and Mr. Williams utterly failed to prove any of them false.

Q. Do you know or are you acquainted with the ditch marked on plaintiff's Exhibit A, running from the "quarter corner" down to or near the mill? And, if so, describe the ditch and the size of it.

862

A. I am acquainted with the ditch, having had it constructed myself. The ditch is of sufficient capacity to carry all the water of Hot Creek cañon from the said quarter corner to the mill. It would be impossible to construct the whole ditch with a plow, as in one place it crosses the main traveled road at a depth of about three feet, and under the road is set a box made of three-inch lumber, sufficient alone to carry all the waters of said Hot Creek, which box alone is worth more than $10.00; and another section of the ditch passes through rocky ground that could not be excavated by a plow. There is another box of three-inch lumber, worth more than $10.00, crossing another road down near the mill site proper. Hence it is absurd to say that it could be constructed for $10.00 with a plow. I do not know that Mr. Williams ever used the ditch himself. If he did it was never by my consent, the ditch being part of the property of the New Philadelphia Mining Co. and subsequently of Matthiesson and Ward. The quartz mill on the land in controversy is worth $50,000 or $60,000, basing it on its cost.

863

Plaintiffs offer in evidence a letter dated Eureka, Nevada, May 16, 1886, and addressed to Mr. R. Gluyas, Hot Creek, Nevada, and signed by F. H. Hinkley, register of the U. S. land office at Eureka, marked Plaintiff's Exhibit Z. Solicitor for defendant objects to the letter on the ground that it is incompetent, irrelevant, and immaterial.

Plaintiff offers in evidence certified copies of newspaper notices to show that defendant Williams was in Eureka from May 15th to May 18th, inclusive, 1883, marked Plaintiff's Exhibit A 1.

Solicitor for defendant objects to the certified copies of said newspaper notices on the grounds that it is not sworn to and cannot be received in evidence and are ordinary newspaper notices.

Plaintiff offers in evidence a copy of the bond and agreement made by M. M. Donahoe to Jos. T. Williams and wife, testified to by defendant Williams in his examination to show that said bond has not been canceled but is still in full force, virtue, and effect, marked Plaintiff's Exhibit B 1.

864

Solicitor for defendant objects to the bond on the ground that the same is immaterial, irrelevant, and incompetent and has no connection with matters in controversy. The bond shows on its face that it was executed more than eleven years ago, during all of which time the said Jos. T. Williams & wife have continuously occupied

the land agreed to be purchased by M. M. Donahue, one of the parties thereto.

Q. Do you remember the date that list No. 24 was sent from the General Land Office at Washington back to the local land office at Eureka to be forwarded by the officers of the local land office at Eureka to the State land office at Carson, Nevada, for the purpose of supplying the signature of the selecting officer to said list?

Solicitor for defendant objects to the question on the ground that it is secondary evidence; the document in evidence is the best evidence.

A. I cannot tell the exact date. I think it was late in Au-
865 gust, 1883, and was returned late in September, 1883, to the Land Office in Washington.

Q. Were you and Mr. Williams in Eureka, Nevada, in the month of September, 1883; and, if so, on what business were you engaged?

A. We were there from early in September, 1883, from about the first week until the last week of September, 1883. Mr. Williams and myself were there. We were trying a land case in the U. S. land office at Eureka, Nevada.

Cross-examination of RICHARD GLUYAS by Judge HEALY, soliciter for defendant:

Q. Did not Donahue tell you that the bond between himself and Williams and wife was obsolete, and that none of the conditions had been complied with by Donohue?

A. He never did. I particularly asked Donohue if the bond was still in full force and effect. He replied that it was.

Q. Did not Donohue swear that he told you the bond was obsolete and worthless?

A. He never did, to my knowledge.

866 Q. Did not Donohue make an affidavit that he so told you that the bond was obsolete and worthless?

A. Never, to my knowledge.

Q. Did not Donohue, in the proceeding of a contest for the homestead of Jos. T. Williams, make affidavit that he told you, when you applied to purchase this bond, that it was worthless and obsolete?

A. I never remember anything of the kind. I do remember his testifying that the bond was not worthless and obsolete, but, on the contrary, that it was in full virtue and effect; and the same may be found in the testimony given by the said Donohue last October and November, 1885, at Eureka, which certainly must be the best evidence of what Donohue did testify to.

Q. Was this bond assigned to Matthiessen & Ward?

A. Yes, sir.

Q. Did you procure the assignment of the Donohue bond for Matthiesson & Ward?

A. I did, sir.

Q. For what purpose did you buy or purchase this bond made eleven years ago?

867 A. To prevent Mr. Williams joining Donohue and his prinpal, Franklin, to trouble Matthiesson & Ward in their rights to waters and land in Hot Creek cañon.

Q. Did Matthiesson & Ward, through yourself or any other agent, ever offer to comply with the covenants made by Donohue in the bond referred to?

A. No; because the time has not come as specified in the bond.

Q. Has not Williams diligently tried to obtain the Government title to the land named in the bond?

A. Yes; but he swore that he made no contracts to alienate any of his land; but Matthiesson and Ward introduced a copy of the bond into the contest that they are making against the homestead entry of Williams to show that he had.

Q. You just swore that you never boasted, in substance, that Matthiesson & Ward or their agent did anything to annoy or harass Williams, and yet this bond is introduced to defeat his title to the land through which you expect to darrain your title. How do you account for this action?

868 A. I do not know what Matthiesson and Ward's motive was, but I account for it because of the answer Williams made as to his homestead entry, as above referred to. Matthiesson & Ward's attorneys never explained to me the reason why they introduced that bond in evidence in the contest at Eureka.

Q. Was not the Donohue bond bought for the purpose of harassing Williams and forcing a compromise?

A. No, sir; it was to keep Williams from harassing us by combining with Franklin & Donohue, the owners of the bond at that time.

Q. You said that Donohue was the agent of Franklin, who was the monied man. Why did you not get a bond from Franklin, who was, as you believe, the real party in interest?

A. We did. We took a deed from Franklin before we put the bond on record, and then we recorded them both the same day.

Q. Did you ever hear that Donohue had made an affidavit that he told you he had no rights and claim under that bond?

Plaintiff objects that it is hearsay and too remote to be even good hearsay.

869 A. I have never heard, but I have seen Mr. Williams' testimony to that effect in this case; but Donohue told me that when he was in Eureka, in September, 1882, that he went into Lansing's office with Williams, and that Lansing drew up a schedule of an affidavit that had something to that effect in it, and that Donohue objected to the affidavit, and that Lansing drew up another, leaving out those words to that effect, which Donohue went across to the court-house and swore to, and that the said affidavit was destroyed by fire when Mr. Williams' house burned down, in November, 1882; that he got his information from Mr. Williams to that effect. In 1885, when Donohue testified directly against having informing me of anything of the kind, and I also testified against anything of the kind, as that the bond was obsolete, H. K. Mitchell in-

troduced an affidavit said to have been made by Donohue in August, 1882. The contents of that affidavit I do not know, but it is on file in the contest case. I told Donohue this about this August affidavit being filed there. He said it was none of his affidavit; that
870 he was not in Eureka in August, 1882, and that he believed it was the old schedule that Lansing had drawn up.

Q. Did you not know that the land deeded by Williams to Campbell was deed- by mistake?

Plaintiff objects to question as not in cross-examination.

A. I never heard or knew of it before Williams testified to it in 1885, and I don't believe it now.

Q. Was it not generally regarded by the people of Hot Creek and vicinity that the Donohue bond was obsolete and worthless?

Objected to by plaintiff on the grounds that the opinions of the people at Hot Creek as to the validity and worth of a bond between Donohue and Williams has no bearing upon the issues in this case betweeen the Government and Williams.

A. I never heard a word about the bond until Donohue told me about it a few days before its purchase. I do not know what the people of Hot Creek and vicinity thought of it.

Q. How long after you purchased the bond did you procure the deed from Franklin?

871 A. About two months, Franklin not being at Hot Creek during that time.

Q. What was the occupation and standing of Donohue at Hot Creek at the time the bond was purchased?

A. He was then connected with Franklin in a mining enterprise in Hot Creek, Nye Co., Nevada. I always found Donohue to be an honest, square man in all my dealings with him.

Q. Did not the New Philadelphia Mining Co. work the mines named in the bond from Trowbridge to Williams under the option bought from W. G. Smith?

A. They worked the mines, and I presume it was under the option. I know of no other right than under the option.

Q. Did you take any ore from those mines?

A. There was ore taken out of the mines by myself, as agent of the New Philadelphia Mining Co., but never removed from the claims by the said company.

Q. Why did Williams forbid you to take ore from these mines?

A. I never knew his reason.

872 Q. If the sale of the mill site was separate and independent, why did the New Philadelphia Mining Co. work the mines named in the bond from Williams to Trowbridge, and also in the option from Clayton to Smith, treasurer of the New Philadelphia Silver Mining Company?

A. To test the mines, to see if they were worth the money specified in the said option. The mill site required no such test.

Q. How long did you work these mines, and when did you cease working them?

A. About seven months, ceasing to work them in February, 1880.

Q. When the bond for the sale of those mines expired; and was not the limitation of the bond also the period of the option?

A. I do not know exactly. I think it was extended a month, which made it end about July, 1879, as of record. I do not know about the limiting of the option by the bond, as it is a legal question.

Q. Do you know how much money is required by law to be expended upon a mine before it is patented?

A. As I understand it, $500.00.

873 Q. Do you know how much is the expense of a patent to a mining claim?

A. No, sir; not exactly. I should judge about $250.00.

Q. The six claims were patented?

A. Yes, sir.

Q. What would you estimate the probable expense in obtaining patents to the same?

A. About $4,500, if done according to law. This means the total cost, including $500 worth of labor to be done before patenting on each claim. In my opinion these claims did not comply to the law as to work, and I would judge that Mr. Williams is only out about $800, or maybe a $1,000 cash in getting the patents; but this is only my opinion.

Q. You testified that Williams made a promise to relinquish his desert-land entry in favor of Matthiesson and Ward. What inducement had he to make such a promise?

A. I know of no inducement; he volunteered the promise.

Q. Is it natural for a man who believes he has been greatly wronged to give up all his rights in the controversy for nothing?

A. No.

874 Q. What advantage would your signing a paper stating that Williams relinquished his desert-land entry No. 158 at the request of Matthiesson and Ward be to Williams?

A. I do not know of any; there would be none that I know of.

Q. Was Williams drunk or insane at the time of making the alleged promise?

A. I have no reason to think that he was drunk or insane at the time he made the promise, but I do suspect he was insane when he broke it.

Q. You have testified that 5,000 shares of the capital stock of the New Philadelphia Co. was no part of the consideration to be given to Williams for the purchase of the mill site, mines, and water rights. Are you absolutely sure of this?

A. Only as Clayton and Smith told me; I do not know of my own knowledge.

Q. Have you any belief on that subject?

A. I believe Clayton and what he told me. He was very sincere at the time, and I have known him for a great many years, etc.

Q. When did Mr. Clayton tell you this?

A. In Clayton's room, in Hot Creek, about November, 1879.

875 Witness is here shown defendant's Exhibit No. 2 and reads the first page of a copy of a letter from J. E. Clayton to Jos. T. Williams, dated New York city, May 19, 1879, wherein it is contended by defendant's solicitor that 5,000 shares of the stock of the New Philadelphia Silver Mining Company is promised as part of a consideration for the purchase of a mill site, water rights, and mines named in the bond from Williams to Trowbridge.

Witness here identifies a portion of defendant's Exhibit No. 2 as being an option from J. E. Clayton to W. G. Smith, treasurer of the New Philadelphia Silver Mining Company.

Q. Is not 5,000 shares of the capital stock named in said option as a part of the consideration for the purchase of the property named in the bond from Williams to Trowbridge?

A. Yes; as a part of the consideration to be paid to Clayton by Smith. I found it in a personal clause in the option that Clayton states that he will use his endeavors for Smith, etc.

Q. Do you not find it named as a part of the consideration outside of any personal clause?

876 A. No; because I consider it all a personal option from Clayton to Smith. I do find the 5,000 shares mentioned in a clause above the one I looked at as especially personal.

Q. Is not the consideration in the bond given by Williams to Trowbridge $25,000?

A. I think the bond shows that it is $25,000 that Trowbridge was to pay to Williams for the property mentioned in the bond, but that the mill site and water right mentioned in the bond were not the same as described in the deed subsequently made by Williams direct to the New Philadelphia Silver Mining Company.

Q. Was there any mill site or water rights described in the bond from Williams to Trowbridge?

A. There was a mill site and water right mentioned, but I think there was no description.

Q. Then how do you know that the water right and mill site named in the bond was not the same as the one conveyed by Williams to the New Philadelphia Co.?

A. Because it simply said in the bond mill site and water right for a 20-stamp mill, and in the deed referred to the east half of the southeast quarter sec. 33, township 8, was described as the

877 mill site, and the description of the water right was exclusive right for milling, mining, and domestic purposes to the waters on the springs and streams of the said Williams. This is about the way it was described in the deed—an exclusive right.

Q. Do you know how much land is allowed by law for a mill site?

Plaintiff objects to the question on the ground that the mining laws of the U. S. is the best evidence as to the amount of land allowed to be taken up for a mill site.

A. I believe one is allowed to take up 5 acres for a mill site under the law of the United States.

Q. Did anybody ever tell you that the mill site and water rights

described in the bond were different from the mill site and water rights conveyed by Williams?

A. No, sir; I only saw the difference in reading the separate documents.

Q. Might not the mill site named in the bond, "near said Hot Creek, with ground for wood yards, buildings, and other necessary uses for said mill," be comprised in the 80 acres conveyed by Williams?

A. It certainly might.

878 Witness is here shown and identified a pamphlet, marked Defendant's Exhibit No. 3, as Defendant's Exhibit No. 3.

Plaintiff objects to any testimony being given about said exhibit as not being in cross-examination.

Q. Does said exhibit contain a map of the claims (mining) named in the bond?

A. It does; not correctly located, but a sketch map.

Q. Does it not purport to be a report of the New Philadelphia Silver Mining Company, and is it not signed by Geo. D. Hyde, as president of said company?

A. It purports to be a report of the New Philadelphia Company, signed by Geo. D. Hyde, president of the company, for the year 1879, signed on page 8, and the signature is March 15th, 1879 (and Trowbridge took the bond in November, 1878), which is the same date that W. G. Smith signed the option to the New Philadelphia Silver Mining Company, as shown in Defendant's Exhibit No. 2.

Q. Was J. E. Clayton in the employ of the New Philadelphia Co. on March 15, 1879?

A. Yes. I understand that his employment commenced on that day by the company.

879 Q. In the Defendant's Exhibit No. 3 there is also a report by J. E. Clayton on Richmond and Empire mines (Old Dominion), Bismark, Bullion, Crescent, and Dexter, which states: "The mining properties acquired from Mr. Williams are fully capable of supplying 20 tons of ore per day; that will give an average yield of $30.00 per ton. Some portions of these mines will give ore worth from $100 to $300 *dollars* per ton," etc. Was not the stock of said company sold upon the representation of said Defendant's Exhibit No. 3?

Plaintiff objects to the question on the ground that it is incompetent, irrelevant, and immaterial; further, that it is not in cross-examination, and, again, that it is not pertinent to any issue in the case.

A. I do not know of one share of the stock being sold at any time, but I have heard that considerable was sold on Professor Clayton's report, but failed to hear that it was explained that Clayton was to receive $5,000 if the mining claims in question were ultimately purchased from Mr. Williams.

880 Q. Do you know if this Defendant's Exhibit No. 3 was pub-

lished by authority of the New Philadelphia Silver Mining Company?

A. No, sir; I do not.

Q. Have you any belief on the question?

A. I believe it was issued by the company.

Q. Was not the money or a portion of the money for which the stock was sold expended in building the mill?

A. I could not say where the money was raised to build the mill.

Q. Have you any belief on the subject?

A. I believe the money came from the false representations made in the Defendant's Exhibit No. 3, and, among others, Matthiesson and Ward were the heaviest losers. They are now the owners of the property formerly owned by the New Philadelphia Silver Mining Co.

Q. Do you include in the term "false representations" the false representations on page 10 of Defendant's Exhibit No. 3 of the ownership of the mines as well as a false representation of the value of the same?

Plaintiff makes the same objection to the giving of testi-
881 mony in regard to the Defendant's Exhibit No. 3 as it made on the preceding page of this testimony.

A. At the bottom of said page 10, beginning at the words "the mining properties acquired from Mr. Williams," cannot be true, because they never acquired title from any one, and the part as to the value of the property was proved by subsequent work to be not true also.

Q. Was not Matthiesson and Ward or either one of them trustees or trustee of the New Philadelphia Silver Mining Co.?

(Same objection.)

A. No, sir; neither of them ever held any official capacity in the company whatever. They were simply stockholders.

Defendant offers in evidence a deed here, marked Defendant's Exhibit No. 7, from H. B. Campbell, of Nye county, State of Nevada, to Joseph T. Williams, of the same place, dated April 2, 1886, for the purpose of showing that the land heretofore conveyed from Williams and wife to Campbell was conveyed by mistake, and neither the grantors intended to convey the same nor did the grantee in-
882 tend to acquire the title to the same.

Plaintiff objects to the introduction of said deed on the following grounds, to wit: 1st, that it is incompetent, immaterial, and irrelevant; 2d, that it is not in cross-examination of anything drawn out of the witness in chief, nor does this purport to contradict him in any of his testimony; and, furthermore, if such a deed was in existence at the time defendant Williams gave testimony in this case it should have been produced and offered in evidence as part of the defendant's case in chief; that said deed upon its face does not purport that any lands heretofore conveyed by Williams and wife to Campbell were conveyed through mistake, but that said deed is ab-

solute on its face; that said deed is dated April 2d, 1886, and recorded July 5th, 1886, which dates are long subsequent to the bringing of this action and which show that said deed was executed after the commencement of this action.

883 Redirect:

Q. When were you last in Belmont?

A. I was in Belmont June 26th, 1886, and for two days before.

Q. Did you examine the records of the county recorder's office to ascertain if there were any deeds on record from H. B. Campbell to J. T. Williams and wife subsequent to a deed purported to be dated in November, 1875?

A. We did make a thorough search, the recorder and myself, and found none subsequent to the deed mentioned in the question.

Q. Did Matthiesson and Ward ever acknowledge or admit that defendant Williams had any claim whatever upon them in any way, shape, manner, or form?

A. They never did, but always contended for the contrary, namely, that they owed Williams nothing and he never had a claim on them, and that they never had anything to arbitrate with him.

Witness recalled for defendant for further cross-examina-
884 tion, and testifies as follows, to wit:

Q. Is there not a suit now pending in this court wherein Matthiesson and Ward are plaintiffs and J. T. Williams defendant, for $55,000 damages?

A. Yes, sir.

Q. Has not Matthiesson & Ward or their agents been in active operation in preventing Mr. Williams for years past from acquiring the titles to his property?

A. No; but they have been in active operations to prevent Williams from acquiring title to their (Matthiesson & Ward's) property.

Q. If the property (lands) is Matthiesson & Ward's why are they engaged in lawsuits to obtain title to the same, and have they patents to the same?

A. They have the possessory title to parts of the lands and want their Government title, but have not the patents as yet.

Q. Have Matthiesson & Ward, by themselves or agents, made applications for patents to the lands?

A. Yes, sir; to most of Mr. Williams' homestead tract or
885 entry through possessory titles derived from Josselyn and for a five-acre mill site on the land in controversy herein.

I acknowledge the above to be my testimony and that the same is correct.

RICHARD GLUYAS.

Carson, Nevada, July 10th, 1886.

Here closed the testimony in said cause.

DISTRICT OF NEVADA, *ss:*

I, T. J. Edwards, a commissioner of the circuit court of the United States for the district of Nevada, do hereby certify that, pursuant to the written stipulation of solicitors for the parties complainant and defendant in a cause depending in said circuit court wherein The United States is complainant and Joseph T. Williams is defendant, the testimony of J. W. Adams, C. S. Preble, M. D. Noteware, W. T. Hanford, and Richard Gluyas, on behalf of complainant, and the testimony of Joseph T. Williams on the part of the said defendant, was taken and reduced to writing by me or under my
886 direction at the office of the clerk of said circuit court, at Carson City, Nevada; that said witnesses were by me first duly sworn to testify the truth, the whole truth, and nothing but the truth; that the exhibits introduced in evidence, to wit, complainant's exhibits from 1 to 10, inclusive, and from A to Z, inclusive, also O 1, Q 1, A 1, and B 1, and Defendant's Exhibits Nos. 1, 2, 3, 4, 5, 6, & 7 are identified by my name or the initial letters thereof written thereon, and that said exhibits and said testimony of the above-named witnesses herewith returned is all the testimony introduced by the said parties.

I further certify that I am not of counsel for either of said parties, and that I have no interest in said suit.

Respectfully submitted, T. J. EDWARDS,
Com'r U. S. Cir. Court, 9th Cir. & Dist. Nevada.

Endorsed: U. S. cir. court, district Nevada. United States *vs.* J. T. Williams. Complainant's testimony in rebuttal, taken by T. J. Edwards, U. S. commissioner. Published by order court and filed Nov. 1, 1886. T. J. Edwards, clerk.

887 *Opinion.*

In the United States Circuit Court, Ninth Circuit, District of Nevada.
In Equity.

UNITED STATES
vs.
JOSEPH T. WILLIAMS.

This suit is brought to cancel and vacate a listing of certain lands to the State of Nevada, which listing is alleged to have been procured by the fraudulent acts of parties unknown or by mistake, misadventure, or inadvertence of the officers of the Land Department, at Washington. The lands affected by the suit are described as the E. ½ of the S. E. ¼ of section 33 and W. ½ of the S. W. ¼ of section 34, all in T. 8 north, range 50 E., Mount Diablo base and meridian, situated in Nye county, State of Nevada. The amended bill sets out the alleged frauds and mistakes by reason of which the lands were listed to the State quite fully and in detail.

888 The bill avers that on May 19th, 1879, the respondent Williams made desert-land entry No. 158 at the land office at

Eureka, Nevada, for two hundred and fifty acres of land, which entry embraced the lands above described, with other lands; that on July 26th, 1879, in consideration of $5,000.00 then paid to him by the New Philadelphia Silver Mining Company, said Williams conveyed to said company eighty acres of land, being the E. ½ of the S. E. ¼ of section 33, township and range aforesaid, the same being a part of the land embraced in said desert-land entry No. 158, and that said company immediately thereafter erected a quartz mill thereon at an expense exceeding $50,000.00; that on May 20, 1882, Williams made a written relinquishment of said desert-land entry and filed the same in said local land office at Eureka, Nevada, June 9, 1882, and that the same was forwarded by said office to the General Land Office, at Washington, for action thereon; that on May 20, 1882, Williams made an application to the register of the land office of the State of Nevada to purchase 160 acres of land, being a
889 portion of the land embraced in said desert-land entry, to wit, the eighty acres of land last above described and eighty acres adjoining thereto, to wit, the W. ½ of S. W. ¼ of sec. 34, township aforesaid, which application was filed in said State land office May 22, 1882; that on July 29th, 1882, the State of Nevada executed an application of that date for said 160 acres of land.

That on August 4, 1882, the Commissioner of the General Land Office ordered said desert-land entry to be cancelled, which order was received at the local land office at Eureka, Nevada, August 12, 1882, and the same was cancelled in said office on that date.

That on August 14, 1882, the application of the State of Nevada for said 160 acres of land, based upon Williams' application of May 20, 1882, was received at the United States land office at Eureka, Nevada, and thereupon the register of said office notified the State authorities that they might include said tract of 160 acres of land in their selection for the month of August, 1882; that on or about September 2, 1882, said State authorities selected a list of lands to be approved to the State, under an act of Congress of June 16,
890 1880, and presented said list to said United States land office at Eureka, Nevada, September 2, 1882, which list embraced said 160 acres of land aforesaid; that in October, 1882, said list, being list No. 24, under said act of Congress, was transmitted to the General Land Office, at Washington, and was received at said last-named office about October 12, 1882, and filed therein; that said list No. 24 was not attested by any officer or agent of the State of Nevada until on or about September 12, 1883, and was not so attested when the lands therein listed were erroneously certified to the State, May 3, 1883; that said list of lands so selected by the State was designated as list No. 24 and embraced, with other lands, the two tracts of eighty acres above described; that on May 3, 1883, the Secretary of the Interior, upon the certificate of the Commissioner of the General Land Office, approved the lands embraced in said list No. 24 to the State of Nevada, including said two eighty-acre tracts of land; that said Commissioner certified that said lands embraced in said list No. 24 were open to such selection and free from conflict
891 with other claims upon the belief that they were so open to

selection and free from conflict; that they were not, in fact, open to selection by the State and were not free from conflict with other claims, and that said action of the Commissioner was induced either by the fraudulent erasure of records by some person unknown, acting in the interest of Williams, or by reason of the mistake, inadvertence, or misadventure of some officer or employee of complainant; that the facts and circumstances under which said lands were so certified and approved and the fraudulent acts or mistake, inadvertence, or misadventure which induced such certification in addition to those hereinbefore set forth are as follows: That prior to the filing of said list No. 24, on September 6th, 1882, F. O. Matheisen and L. B. Ward, who had theretofore purchased said eighty acres of land, to wit, the E. ½ of S. E. ¼ sec. 33, T. 8, R. 50 E., by their attorneys, filed in the General Land Office, at Washington, an application for the reinstatement of said desert-land entry No. 158, together with a protest against the selection by the State of said eighty acres contained in said list No. 24, to which they
892 had acquired title, and asking a hearing of their rights, they claiming to have derived an interest in said lands by purchase from Williams through intermediate parties, who had expended more than $50,000.00 in the erection of a quartz mill thereon.

That on or about January 8, 1883, said Matthiessen and Ward, being duly qualified in that regard and being the owners of the quartz mill and reduction works erected and standing for more than two years prior thereto on said lands, to wit, the E. ½ of the S. E. ¼ sec. 33 and the W. ½ of S. W. ¼ sec. 34, T. 8 N., R. 50 E., made their application, at the United States land office at Eureka, Nevada, to enter as a mill site and for a patent therefor five acres of land, being a part of the lands and two tracts last described and being a part of the land embraced in said desert-land entry No. 158, made by Williams, and including said quartz mill, reduction works, and improvements connected therewith.

That said application was rejected by said local land office for the reason that the land applied for for such mill site was embraced in said State selection embraced in list No. 24, filed in said office
893 September 2, 1882; that from said decision an appeal was duly taken the day the same was rendered to the Commissioner of the General Land Office, at Washington, and the papers connected therewith were received by said Commissioner January 18, 1883, and filed in said office, and said mill-site application became and was a pending adverse claim to the claim of the State of Nevada to the said land; that at the date of the receipt of said mill-site application at said General Land Office said list No. 24 was on file in said office, but without action or decision as to any of the tracts of land embraced therein; that upon the receipt of said application for a mill site said Commissioner caused a note of conflict to be entered on said list No. 24 opposite to the two said tracts of land in controversy by writing the words "mill site" on the margin of said list No. 24; that this was the customary way in said office of denoting an adverse claim to a State selection and suspended action upon

said State selection until said application for a mill site could be disposed of in the due course of business of such office.

894 That on February 21, 1883, said office denied said application of Matthiessen and Ward to reinstate said desert-land entry No. 158, and, in making said decision in relation to the protest against so much of the State selection as embraced the lands in controversy, said "the question of the validity of the State selection will be determined in due course of action therein by this office."

That said application of Matthiessen and Ward for said mill site was referred to the proper department of said Land Office, with the direction that the same be considered together with said State selection of said lands embraced in list No. 24.

That on May 3, 1883, and while said mill-site application was still pending and undecided the officers and clerks of the pre-emption division of said Land Office, contrary to law and in disregard of the rules and regulations of said office and in disregard of the special instructions of the Commissioner, proceeded to consider and determine the application of the State of Nevada as evidenced by said list No. 24, and, without consideration, examination, de-

895 cision, or reference to the then pending mill-site application of Matthiessen and Ward, made out a "clear list," so called, in favor of the State of the tracts of land inuring to the State, embracing therein by mistake and error and contrary to the truth the lands embraced in the mill-site application of Matthiessen and Ward.

That the Commissioner and Secretary of the Interior signed said "clear list" upon the faith of the certificate indorsed thereon that the lands embraced therein were free from conflict and upon the belief that all necessary examinations had been made, and thereby said list became in form a conveyance to the State of Nevada of the several tracts of land embraced therein, including the land embraced in the application of Matthiessen and Ward for a mill site, upon which the quartz-mill buildings and other improvements had been placed.

That said Matthiessen and Ward were lawfully entitled to have their rights as such applicants for said mill site passed upon and determined before the legal title to the lands claimed by them

896 should be passed out of the United States to any party claiming adversely to them.

That said certification of said "clear list" was made by said officers of the Land Department by mistake, inadvertence, and misadventure, and that said list at the date thereof was and now is false and fraudulent as to the lands in controversy; that while said State selection No. 24 was in the General Land Office, at Washington, it was subject to inspection by parties in the interest of the State or of Williams, respondent, and their agents and attorneys, and before the same was taken up for action by the Commissioner the note and words "mill site" entered on the margin of said list were fraudulently erased by some unknown person with the fraudulent intention of obtaining action upon said selection embraced in said list favorable to the State and in aid of the application of Williams to

purchase said lands in controversy; that said lands were so approved to the State by reason of such fraudulent erasure.

That in December, 1883, said mill-site application was taken up in the General Land Office, together with said State selection
897 of the lands in suit, for action, when it was then first discovered that said land had been approved to the State; that on February 2nd, 1884, Williams entered into a written contract with the State of Nevada to purchase the lands in controversy in compliance with his application to purchase the same, of date May 20, 1882.

That immediately upon the discovery of the erroneous certification of said lands the Commissioner of the General Land Office, on December 11, 1883, notified the Governor of the State of Nevada, by telegraph, that said two tracts of land had been erroneously included in said clear list, and requested him to cause the same to be returned to said General Land Office for correction; that its return was refused, as Williams had made application to purchase the same, and on the 15th of December, 1883, said Governor was notified that suit would be brought to annul said listing as to the lands in suit; that Williams, prior to entering into contract with the State for the purchase of said lands, had full knowledge of the intention of complainant to annul said listing as to said lands, and entered into said contract with full knowledge of said alleged frauds and
898 of the false and fraudulent manner by which the same were procured to be certified to the State; that said lands in controversy were not unappropriated public lands and not within the terms of the grant of June 16, 1880, but that the same had been occupied as private lands since July 26th, 1879, under and by virtue of the deed of conveyance thereof executed by Williams of that date, and the same were so occupied when said Williams applied to the State to purchase the same, May 20, 1882, all of which Williams well knew when he applied to purchase the same.

That at the date of said Williams' application to purchase said lands of the State he knew they were not subject to selection and purchase, as his desert-land entry No. 158 therefor was still in force and uncancelled and the same constituted a record appropriation thereof on the books of the local land office at Eureka, Nevada, and on the books of the General Land Office, in Washington.

The answer admits many of the averments of the bill and denies but few of them. It avers that said lands were free from
899 conflict with other claims at the date of their certification to the State, May 3, 1883; "denies that respondent made or caused to be made any erasure of records, fraudulently or otherwise, or had any knowledge of such erasure until he heard the allegation of such erasure, in December, 1883, as emanating from the Hon. Secretary of the Interior, at Washington;" denies that such erasure was sufficient cause for withholding the certification and approval of said lands to the State, or that it induced such certification, or that if it had not been made said list No. 24 would not have been vitiated thereby; avers that the lands in suit were "unappropriated nonmineral public land" within the meaning of the act of Congress of

date June 16, 1880; that the application of Matthiessen and Ward, of date January 8, 1883, for a patent for a mill site was frivolous and ought not to be entertained; that the whole subject-matter of the suit is *res adjudicata*.

The evidence submitted fully sustains all of the material allegations of the bill, and it would be a superfluous task to review it in detail.

By act of Congress approved June 16, 1880, there was
900 granted to the State of Nevada two millions of acres of land in lieu of the sixteenth and thirty-sixth sections of land theretofore granted to said State. (U. S. Statutes, vol. 21, page 287.) Section 2 of said act provides "the lands herein granted shall be selected by the State authorities of said State from any unappropriated non-mineral public land in said State, * * * and when selected in conformity with the terms of this act the same shall be duly certified to said State by the Commissioner of the General Land Office and approved by the Secretary of the Interior." This grant took effect upon its passage. It was a grant *in presenti* and attached to specific tracts of land when the same should be selected by the State and duly certified to it by the Commissioner of the General Land Office and approved by the Secretary of the Interior, as provided by the act.

Under the pleadings and proofs in the case two questions arise:

First. Was the land in controversy, at the date of selection and listing the same to the State, "unappropriated non-mineral public land" within the meaning of said act?

901 There is no contention but that it is "non mineral" land, and this qualification, therefore, need not be considered.

Second. Was the listing of the land in suit obtained through or by means of the fraudulent acts of any party or parties or by the inadvertence, mistake, or misadventure of any of the officers of the General Land Office charged with the duty of listing and approving the same to the State?

The evidence shows this state of facts. Some years prior to 1879 the respondent Williams entered upon and took possession of the land in controversy, the same being then unsurveyed public land of the United States. He continued in possession thereof until July 26th, 1879, when, in consideration of five thousand dollars paid to him, he conveyed the land to the New Philadelphia Silver Mining Company, a New York corporation, which company immediately entered into possession of the same and during the same year erected a quartz mill thereon at an expense exceeding $50,000.00. This company continued in possession of the land and mill and expended a considerable sum of money in conducting water to
902 the mill for reduction purposes and in other improvements. In the year 1880 the company became embarrassed, was sued, judgment recovered against it, and this property sold in satisfaction thereof to one Lebbeus Ward, and sheriff's deed therefor was duly issued to Ward, of date July 12th, 1881.

Proceedings were also instituted against the company about the same time in the supreme court of the State of New York, a receiver

was appointed, and the affairs of the company wound up. The receiver was ordered to sell the property of the company, and at such sale Matthiessen and Ward became the purchasers of all the property of the company and received a deed therefor from said receiver, of date September 16, 1881. From the dates of the deeds above mentioned Matthiessen and Ward have been the owners of all the property formerly owned by the New Philadelphia Silver Mining Company, including the mill and land in controversy, water rights and privileges, and since said dates have had continuous, peaceable, and quiet possession of the same and now have and hold such possession as against all persons.

903 Under this state of facts it cannot be contended, under the repeated decisions of both national and State courts, that this land was "unappropriated and public land" at the time of its selection by the State or at the date when it was listed to the State.

Atherton *vs.* Fowler, 96 U. S. 513.
Hosmer *vs.* Wallace, 97 U. S., 575.
Trenouth *vs.* San Francisco, 100 U. S., 251.
Nichols *vs.* Winn, 17 Nev., 189.
McBrown *vs.* Morris, 59 Col., 64, and cases cited.

These decisions are authoritative as to what are "public lands" under the pre-emption laws, and also what are "unappropriated public lands" under the homestead law. R. S., sections 2258, 2259, 2289. If, then, the lands in controversy were not "unappropriated public lands" and within the terms of the grant at the date of selection and listing to the State, as they were not, such listing was without authority of law and was and is void and no valid title passed thereby. Under the grant in this case the officers of the General Land Office were authorized to pass to the State the title only of "unappropriated public land." It conferred upon them no au-

904 thority to transfer the title to lands appropriated and lawfully in the possession of others who had expended large sums thereon and who were then seeking to obtain the United States title thereto or a portion thereof, even though such lands were public lands in the sense that the paramount title thereto still vested in the United States. The date of the application of the State to select these lands, list No. 24, is August 31st, 1882, but said application was not attested or authenticated by any officer or agent of the State until about September 12th, 1883. The validity of such attestation at said date, September 12th, 1883, is not now passed upon, as it is not necessary to a determination of the case. The rights of persons situated as Matthiessen and Ward were in reference to these lands have always been protected by the officers of the Land Dedartment and by the courts. It may be conceded that they acquired no rights as against the United States, but as to third parties they had initiated rights which merited and should receive protection.

United States *vs.* Stone, 2 Wall., 525.
Hughes *vs.* United States, 4 Wall., 232.

905 Frisbie *vs.* Whitney, 9 Wall., 187.

It is alleged in the bill, not denied and fully established by

the proof, that at the date of listing these lands to the State and long prior thereto there was then pending in the General Land Office, at Washington, a contest over the application of Matthiessen and Ward for this mill site and their protest against the State selection of the lands in controversy. The whole matter was then *sub judice* in the proper department in the manner by law provided, pending, and undecided. While this contest existed and until determined the lands in controversy were not within the terms of the grant.

Newhall *vs.* Sanger, 92 U. S., 761.

We pass to the second question raised in the case. The allegations of the bill as to the manner in which these lands were listed and approved to the State are in nowise controverted. That the erasure of the record was made is not denied and is patent from an inspection of list No. 24, submitted in evidence. The bill avers, and the proof sustains the averment, that but for this erasure the
906 lands in controversy would not have been approved to the State—at least not until the rights of Matthiessen and Ward had been determined. A clear, palpable, confessed fraud was perpetrated upon the officers of the Land Department in procuring the certification of the lands. Frauds of this and like character have always been held sufficient ground for vacating patents procured thereby. In addition to the authorities cited see—

Johnson *vs.* Towsley, 13 Wall., 72.
Moore *vs.* Robbins, 96 U. S., 530, and cases there cited.
United States *vs.* Minor, 114 U. S., 234.
United States *vs.* Curtner, 24 Fed. Rep't, 296.
United States *vs.* Mullen, 7 Saw., 466, affirmed by the supreme court S. C., Sup. C't Rep'ts, vol. 6, 1041.
Moffatt *vs.* United States, 112 U. S., 24.

It is unnecessary to review these authorities, and they cover every point raised in this case. It may be observed that the certificate endorsed upon the "clear list" passing the title is qualified, not absolute, and evidently designed to reserve the rights of any
907 parties interested. The list is approved "subject to any valid interfering rights which may have existed at the date of selection." * * *

The above considerations dispose of this case upon the merits and law applicable thereto upon the grounds that the land in controversy was not "unappropriated public land" at the date of its selection and listing; that its approval and listing to the State was procured by fraud, palpable and undisputed, upon the officers of the Land Department, without which it would not have been listed to the State, and which frauds deeply affected the rights of third parties in and to the land in suit. The complainant is entitled to a decree cancelling said listing as to the lands in suit and as prayed for in the bill. I am not prepared from the testimony to say who was the party that made the fraudulent erasure complained of and shown. They could hardly have been made in the interest of any one other than the respondent; and in this connection

we may recall the fact, as shown by the evidence, that respondent concealed from Matthiessen and Ward and from
908 their agent in charge of the property the fact that he had relinquished his desert-land entry No. 158; the fact that he had applied to the State to purchase this very land upon which their mill stands, which he had three years before conveyed to their predecessors in interest his telegraphic dispatch from Washington to Carson, of date December 14, 1883, to Governor Adams to execute to him a deed of this land claim "immediately;" "don't delay." All of these things had but one purpose—to wrest from Matthiessen and Ward this large property by covertly obtaining the legal title thereto. This purpose cannot be disguised and is too obvious for comment.

It should not for a moment be supposed that the State or any of its officers took any unusual or improper interest in this matter. When the attention of the Governor of the State was called to the matter he very properly declined to issue State patent for the land, and suggested that legal proceedings be instituted to determine the rights of the parties. It is not probable that the State would
909 ever claim to be the owner of this mill and improvements, even were not the listing annulled as to these lands. It could not afford to acquire property in that manner.

A large amount of evidence was submitted on the part of the respondent which is wholly irrelevant to any issue of fact or law raised in this case and, if considered, cannot in any way affect the judgment which must be rendered upon the facts conceded and proven. This evidence is chiefly in regard to certain contracts entered into between Williams and various parties, but in nowise affecting the merits of this case or connecting him with Matthiessen and Ward or establishing any legal relations or obligations between them and himself. This evidence clearly shows that Williams strongly desires to sell to Matthiessen and Ward certain mining claims, he insisting that they are under obligations to purchase the same, and that they, denying such obligation and doubting the value of the mining claims, just as strongly object to purchasing any of them. Under such circumstances their position would not seem to be unreasonable;
910 but these rights and obligations, if any there be, between these parties cannot be settled in this suit. Ample means of redress are open to any of these parties to enforce any legal obligations existing between them. This suit is in the interest of public right and justice—to correct a public wrong and fraud perpetrated upon a department of the Government.

Let a decree be entered for complainant, as prayed for in the bill, with costs.

GEO. M. SABIN, *Judge.*

(Endorsed:) In the United States circuit court, ninth circuit, district of Nevada. In equity. United States *vs.* Joseph T. Williams. Opinion. Filed Nov. 26, 1886. T. J. Edwards, clerk.

911 *Bond.*

Supreme Court of the United States.

THE UNITED STATES OF AMERICA
vs.
JOSEPH T. WILLIAMS.

Know all men by these presents that we, Joseph T. Williams, principal, and Andrew Maute, Albion W. Millett, and Alexander B. Beatty, all of Nye county, State of Nevada, are held and firmly bound unto the United States of America in the sum of twelve hundred dollars; to which payment, well and truly to be made, we bind ourselves and each of us, jointly and severally, and our and each of our heirs, executors, and administrators, firmly by these presents.

Sealed with our seals. Dated this seventh day of January, A. D. 1887.

Whereas the above-named Joseph T. Williams hath taken an appeal to the Supreme Court of the United States to reverse the decree rendered in the above-entitled action by the United States circuit court of the ninth circuit, district of Nevada:

912 Now, therefore, the condition of this obligation is such that if the above-named Joseph T. Williams shall prosecute the said appeal to effect and answer all costs and damages if he shall fail to make good his plea, then this obligation shall be void; otherwise to remain in full force and virtue.

JOSEPH T. WILLIAMS. [SEAL.]
ANDREW MAUTE. [SEAL.]
ALBION B. MILLETT. [SEAL.]
ALEXANDER BEATY. [SEAL.]

Sealed and delivered in presence of—
Witness as to Joseph T. Williams:
N. S. TROWBRIDGE.
T. W. HEALY,
Witness as to the signatures of Andrew Maute,
Albion B. Millett, and Alexander Beaty.

Judge Sabin:
I consider the sureties sufficient on the above bond.
TRENMOR COFFIN,
U. S. Dist. Att'y.

Jan'y 20, 1887.

913 The foregoing bond is this day approved.
GEO. M. SABIN, *Judge.*

Jan'y 21st, 1887.

[Endorsed:] In Supreme Court of the United States. The United States *vs.* Joseph T. Williams. Bond on appeal. Filed Jan'y 21, 1887. T. J. Edwards, clerk U. S. cir. court, dist. Nevada.

914 By the Honorable G. M. Sabin, one of the judges of the circuit court of the United States, to the United States of America, by its Attorney General, A. H. Garland, Esq., and Trenmor Coffin, Esq., its district attorney in and for the district of Nevada:

Whereas Joseph T. Williams has lately appealed to the Supreme Court of the United States from a decree lately rendered in the circuit court of the United States for the district of Nevada, made in favor of the United States of America, and has filed the security required by law, you are therefore hereby cited to appear before the said Supreme Court, at the city of Washington, on the tenth day of October next, to do and receive what may appertain to justice to be done in the premises.

Given under my hand, at the city of Carson, in the district of Nevada, in the ninth circuit, on the 24th day of January, A. D. 1887.

GEO. M. SABIN,
Dist. Judge, Sitting as Circuit Judge.

915 [Endorsed:] U. S. circuit court, dist. Nevada. United States *v.* Jos. T. Williams. Citation. Filed Jan'y 24, 1887. T. J. Edwards, clerk.

916 In the Supreme Court of the United States.

THE UNITED STATES OF AMERICA
vs.
JOSEPH T. WILLIAMS. } In Equity.

NINTH CIRCUIT,
District of Nevada, } *ss:*

T. W. Healy, being duly sworn, saith that on the 26th day of January, A. D. 1887, at Carson City, in the State of Nevada, he served on the above-named appellee, The United States of America, a copy of the appeal and a copy of the citation filed in this cause with the clerk of the circuit court, ninth circuit, in and for the district of Nevada by delivering said copy of the citation to Trenmor Coffin, Esq., United States district attorney in and for the district of Nevada, personally and by leaving said copy of the appeal for said appellee in the clerk's office of the circuit court aforesaid

T. W. HEALY.

Sworn to this 26th day of January, A. D. 1887, before me—

T. J. EDWARDS,
Com'r U. S. Circuit Court, 9th Cir. & Dist. Nevada.

917 [Endorsed:] U. S. Supreme Court. United States *v.* Jos. T. Williams. Affidavit of service of appeal & citation. Filed Jan'y 26, 1887. T. J. Edwards, clerk U. S. cir. court, dist. Nevada.

918 *Appeal.*

In the Supreme Court of the United States.

THE UNITED STATES OF AMERICA
v.
JOSEPH T. WILLIAMS. } In Equity.

To the honorable the Supreme Court of the United States:

The appeal of Joseph T. Williams, the above-named defendant and appellant, respectfully showeth that on the 18th day of December, A. D. 1884, the above-named complainant filed its bill in the circuit court of the United States, ninth circuit, in and for the district of Nevada against the above-named defendant and appellant, alleging that on or about September 2d, A. D. 1882, the State of Nevada selected a list of lands to be approved by plaintiff, under the act of June 16th, 1880, entitled "An act to grant the State of Nevada lands in lieu of the sixteenth and thirty-sixth sections in said State;" that the said list included the east half of the southeast quarter of section thirty-three and the west half of the
919 southwest quarter of section thirty-four of township eight north of range fifty east, Mount Diablo base and meridian; which said list, designated as "list No. 24," was approved to the State of Nevada by the Secretary of the Interior upon the certificate of the Commissioner of the General Land Office, at Washington, D. C., on May 5, A. D. 1883; that said action of the Commissioner was induced by the erasure of the words "mill site" caused to be written on the margin of said list in pencil by the Commissioner, and that the erasure was made by some party unknown to plaintiff in the interest of defendant Williams; that Williams made desert-land entry No. 158 at United States land office at Eureka, Nevada, on May 19th, 1879, for the lands before described; that on May 20th, 1882, defendant Williams executed a written relinquishment of said desert-land entry, which was filed in the land office at Eureka on June 9th, 1882; whereupon said desert-land entry was cancelled by an order of the Commissioner of the General Land Office, dated August 4th,
920 1882, and received by the register and receiver at the local land office at Eureka on August 12th, 1882.

That on September 6th, 1882, F. O. Matthiessen and L. B. Ward filed in the General Land Office, at Washington D. C., an application for the reinstatement of desert-land entry No. 158, together with a protest against the selection by the State of Nevada of the lands before described, claiming to have derived an interest in said land by purchase from said defendant, Williams, through intermediate parties and to have spent $50,000 on a quartz mill.

That on January 8th, 1883, said Matthiessen and Ward made an application at the local land office at Eureka for a patent for a mill site on the land embraced in desert-land entry No. 158, which was rejected by the register and receiver of the land office, and from this decision rejecting the application for patent of the mill
921 site Matthiessen and Ward appealed to the Commissioner

of the General Land Office, at Washington, D. C., and the decision and the accompanying papers were received January 18th, 1883.

On February 21st, 1883, the Commissioner denied the application of said Matthiessen and Ward for the reinstatement of said desert-land entry No. 158.

That upon receipt of the notice of application for a mill site adverse to the selection by the State of Nevada said Commissioner caused the words " mill site " to be written with a pencil on the margin of list No. 24.

That said specifically described lands, together with others embraced in list No. 24, were certified by the Commissioner through mistake by reason of the fraudulent erasure of the words " mill site," marginal note on said list No. 24.

That in December, 1883, it was for the first time discovered by the Commissioner that he had certified list No. 24, and the Secretary of the Interior had approved said list of lands to the State of Nevada on May 5th, 1883.

That on May 20, 1882, said Joseph T. Williams made application to the State of Nevada for the purchase of the lands specifically described, to wit, E. ½ of S. E. ¼ of sec. 33 and W. ½ of S. W. ¼ of sec. 34, all in t'p 8 north, of range 50 east, and a written contract
922 was made and entered into between the said Williams, defendant herein, and the State of Nevada, through its proper agents and officers, for the purchase of said lands on February 2d, 1884.

Wherefore plaintiff prays the judgment and decree of this court adjudging that the certification and approval to the State of Nevada of the selection of lands described in list No. 24, as hereinbefore set forth, so far as the same embraces the lands hereinbefore specifically described, was and is null and void, and cancelling and setting aside said contract between said defendant, Williams, and the State of Nevada for the sale by said State to Williams of said lands, and that said defendant, Williams, have and take nothing under or by virtue of said contract in order that said list No. 24 may be returned by the State of Nevada and its officers and agents into the General Land Office of plaintiff for correction of the mistake hereinbefore set forth, and in order that the conflict between the selection of the State of Nevada in list No. 24 and the said application for a patent
923 for a mill site may be determined and adjusted in plaintiff's General Land Office according to law, and for such other and further relief as in the premises to this honorable court may seem just and equitable, and for costs of suit.

The defendant interposed a demurrer to plaintiff's bill of complaint, which was filed February 14th, 1885. Defendant doth demur to said bill, and for cause of demurrer showeth that the plaintiff hath not in and for *his* said bill made or stated such a case as entitles it in a court of equity to any discovery from this defendant or to any relief against him as to the matters contained in the said bill or any such matters; that the said bill doth not contain any matter of equity whereon the court can ground any decree or give the plaintiff any relief against this defendant.

The said demurrer went to the jurisdiction of the court as well as to the insufficiency of the facts stated in the bill of complaint. Therein it is contended that the title to the land in controversy, as shown by the bill of complaint, is vested in the State of Nevada
924 and not in the defendant Williams, and that its title cannot be divested in a suit between the United States and Williams, especially so when the State is not subject to the jurisdiction of the court.

Upon argument of the demurrer it was contended by the solicitor for defendant that the land in controversy was, in the meaning of the act of June 16th, 1880, already referred to herein, "unappropriated (non-mineral) land" at the time of its selection by the State of Nevada; that the records in the local land office and the certificate of the register and receiver showed such to be the fact.

The demurrer was overruled, the hon. court holding that the land in controversy was not, in the meaning of the statute of 1880, already referred to, "unappropriated non-mineral land."

The defendant's answer, filed June 1, 1885, denies that the lands in controversy were not open to selection by the State of Nevada; denies that he made or caused to be made any erasure of records, fraudulent or otherwise; denies that the alleged erasure was
925 a sufficient cause for the withholding of the certification of list No. 24, or that if the said list of lands was approved with the words "mill site" written in pencil in the margin that the approval of said list would be vitiated thereby.

Defendant avers that the application for a mill site (and appeal on rejection) on land that had been four months previously selected by the State of Nevada is frivolous and should not be entertained.

Plaintiff filed its amended bill of complaint March 17th, 1886, in which the allegation of fraud by reason of the erasure is very greatly modified and diminished, as shown by the following excerpt: "And that the said action of the Commissioner of the General Land Office was induced either by the fraudulent action and erasure of records by some person, whose name is unknown to plaintiff, acting in the interest of said Williams, defendant, as hereinafter set forth, or by reason of the mistake, inadvertence, or misadv*ertance* of some officer or employé of plaintiff, as hereinafter set forth."

The plaintiff filed *his* bill of exceptions to defendant's an-
926 swer on the 16th day of June, A. D. 1886, which was overruled by the hon. court on the — day of ——, A. D. 1886.

The case was argued on the 9th day of November and a final decree against the defendant filed on the 26th day of November, A. D. 1886, decreeing that the certification and approval to the State of Nevada of clear list No. 2, which was founded on list No. 24 of the State of Nevada's selection of lands under and by virtue of an act of Congress entitled "An act to grant to the State of Nevada in lieu of the sixteenth and thirty-sixth sections to said State," approved June 16th, 1880, in so far as the same embraces the east half of the southeast quarter of section thirty-three and the west half of the southwest quarter of section thirty-four, all in township eight north of range fifty, Mount Diablo base and meridian, was and is

null and void, and the same is hereby set aside and cancelled, and that the contract between the State of Nevada and the said J. T. Williams, defendant herein, of date February 2d, 1884, for the sale of said lands by the State of Nevada to said J. T. Williams
927 and all other contracts or agreements with the State of Nevada that may give him or appear to give him any right, title, or interest in said lands which is derived from, under, or through said clear list No. 2, based upon said list No. 24 of selections of lands by the State of Nevada, are hereby set aside and cancelled, and that said Williams have and take nothing under and by virtue of said contract, and that said Williams is perpetually enjoined and restrained against claiming any right, title, or interest in or to the said lands, and that the said defendant, J. T. Williams, deliver up to the State of Nevada to be cancelled all contracts or agreements that may give him or appear to entitle him to any right, title, or interest in or to said lands, and that the defendant Williams execute and deliver to the State of Nevada, through its surveyor general and *ex officio* land register, a formal and proper instrument, which can be recorded, by which he shall convey to the State of Nevada any and all right, claim, or title he may have or claim to have in the above-described land, and that at the time of
928 the selection of said lands by the State of Nevada said lands were not subject to such selection and were not unappropriated non-mineral lands, but were appropriated and occupied as a mill site for a stamp quartz mill, said mill having been previously erected thereon, and that the certification of said lands to the State of Nevada was through fraud, inadvertence, or mistake, and null and void, and that by reason of the premises there was no authority or jurisdiction in the officers or agents of the Government of the United States to certify and list said lands to the State of Nevada, and that plaintiff have and recover of and from said defendant, Williams, its costs of suit, taxed herein at — dollars, and that execution may issue therefor.

Wherefore the appellant appeals from the whole of said decree of said circuit court of the United States, and respectfully prays that the decree of the circuit court and the bill, answer, pleadings, depositions, evidence, and proceedings in the said cause may be
929 sent to the Supreme Court of the United States without delay, and that the said Supreme Court will proceed to hear the said cause anew, and that the said decree of the circuit court and every part thereof may be reversed and a decree made dismissing said libel, with costs, or such other decree as to the Supreme Court may seem just.

Carson City, Nevada, January 22d, 1887.

T. W. HEALY,
Solicitor for Appellant.

Endorsed: In the Supreme Court of the United States. The United States of America, appellee, *vs.* J. T. Williams, appellant. Appeal. I hereby acknowledge service of the within by copy received this 26th day of January, A. D. 1887. Trenmor Coffin, U. S.

dist. att'y, attorney for appellee. Filed Jan'y 26, 1887. T. J. Edwards, clerk U. S. cir. court, dist. Nevada. T. W. Healy, solicitor for appellant.

930 In United States Circuit Court for the District of Nevada.

THE UNITED STATES
v.
JOSEPH T. WILLIAMS. } In Equity.

DISTRICT OF NEVADA, *ss:*

I, T. J. Edwards, clerk of the circuit court of the United States for the district of Nevada, do hereby certify the foregoing nine hundred and twenty-nine (929) pages, written and by type-writer, are a true and full copy of the enrolled papers and of all proceedings in the cause therein entitled.

Seal U. S. Circuit Court, Ninth Circuit, District of Nevada.

In witness whereof I have hereunto subscribed my name and affixed the seal of said circuit court, at my office, in Carson City, Nevada, this eleventh day of August, A. D. 1887.

T. J. EDWARDS, *Clerk.*

And I do hereby further certify that all the costs of the foregoing record on appeal have been paid in full by said de-
931 fendant and appellant, Joseph T. Williams.

Seal U. S. Circuit Court, Ninth Circuit, District of Nevada.

As witness whereof I have hereunto signed my name and affixed the seal of said circuit court this 24th day of September, 1887.

T. J. EDWARDS, *Clerk.*

Endorsed on cover: Nevada C. C. U. S. No. 157. Joseph T. Williams, appellant, *vs.* The United States. Filed October 8, 1887.

Office Supreme Court U. S.
FILED,
JAN 15 1891
JAMES H. MCKENNEY
CLERK.

IN THE

Supreme Court of the United States

OCTOBER TERM, 1890.

No. 157.

JOSEPH T. WILLIAMS, Appellant,

vs.

THE UNITED STATES, Appellee.

APPEAL FROM THE CIRCUIT COURT FOR THE DISTRICT OF NEVADA.

BRIEF FOR APPELLANT.

J. H. HICKCOX, Jr.,
J. K. REDINGTON,
Counsel for Appellant.

IN THE

Supreme Court of the United States.

JOSEPH T. WILLIAMS, Appellant,

vs.

THE UNITED STATES, Appellee.

No. 157.
October Term, 1890.

Appeal from the Circuit Court for the District of Nevada.

BRIEF FOR APPELLANT.

Statement.

The suit is upon a bill filed by the United States for the purpose of vacating a title to public lands vested in the appellant by purchase from the State of Nevada, to which the same had been certified under the act of June 16, 1880 (21 Stat., 287).

This act is in the following words:

"*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,* That there be, and are hereby, granted to the State of Nevada two million acres of land in said State in lieu of the sixteenth and thirty-sixth sections of land heretofore granted

to the State of Nevada by the United States: *Provided*, That the title of the State and its grantees to such sixteenth and thirty-sixth sections as may have been sold or disposed of by said State prior to the passage of this act shall not be changed or vitiated in consequence of, or by virtue of this act.

"SEC. 2. The lands herein granted shall be selected by the State authorities of said State from any unappropriated, non-mineral public land in said State, in quantities not less than the smallest legal subdivision; and when selected in conformity with the terms of this act, the same shall be duly certified to said State by the Commissioner of the General Land Office, and approved by the Secretary of the Interior.

"SEC. 3. The lands herein granted shall be disposed of under such laws, rules, and regulations as may be prescribed by the legislature of the State of Nevada: *Provided*, That the proceeds of the sale thereof shall be dedicated to the same purposes as heretofore provided in the grant of the sixteenth and thirty-sixth sections made to said State."

December 18, 1884, the United States, by its Attorney-General and attorney for the Nevada district, filed its bill against the appellant, and against him alone, alleging that on or about September 2, 1882, the State of Nevada selected a list of lands under the above-quoted act, to be approved by plaintiff, and presented such list to the local land office of plaintiff at Eureka, Nevada; that such list was designated as No. 24, and embraced the premises in controversy; that on the 5th day of May, 1883, the Secretary of the Interior, upon the certificate of the Commissioner of the General Land Office, approved said list to the State; that the said Commissioner certified that such list of lands were open to selection and free from conflict, but that the premises in controversy were not, in fact, so open to selection, and were not free from conflict with other claims; that said action of the Commissioner was induced by the fraudulent action

and erasure of records by some person to plaintiff unknown, acting in the interest of the defendant, Joseph T. Williams; that the said Williams made a desert land entry of said premises No. 158, May 19, 1879; that on May 20, 1882, he executed a written relinquishment of the same and filed it in the Eureka office June 9, 1882; that upon this relinquishment the said entry was canceled by order of the Commissioner, dated August 4, 1882, and received at the Eureka office August 12, 1882; that in October 1882, the register and receiver, in due course of business, transmitted the State list of selections, No. 24, as aforesaid, to the Commissioner; that on September 6, 1882, F. O. Matthiessen and L. B. Ward, by their attorneys, filed in the General Land Office an application for reinstatement of said relinquished desert land entry, with a protest against the State selection, as aforesaid, for the premises in controversy, claiming to have derived an interest therein from Williams by mesne conveyances; that on January 8, 1883, said Matthiessen and Ward made application to the Eureka land office for a patent for a mill site on certain lands claimed by them within the original desert entry of Williams; that the register and receiver rejected said mill-site application for the reason that the premises applied for were embraced in the State selection as aforesaid; that on the same day from this decision Matthiessen and Ward appealed to the Commissioner; that such application and appeal were transmitted by the register and receiver to the Commissioner January 10, 1883, and were by him received by the latter officer January 18, 1883; that on February 21, 1883, the Commissioner denied the application of Matthiessen and Ward for a reinstatement of said desert land, and in so deciding said, with reference to the protest aforesaid filed against the State selection, that the same would be disposed of in due course of action by the Office; that upon receipt of the said appli-

cation for mill site the Commissioner caused a note of the conflicting claim to be made in pencil on the margin of said list 24 opposite the tracts in controversy, by writing the words "mill site" on said margin; that this was the usual method of denoting the existence of claims adverse to State selections and operated as a suspension of action upon the State selection until the adverse mill-site claim had been disposed of; that while said list 24 was in the General Land Office it was subject to inspection by parties in interest and their attorneys, and that before the same was taken up for action the words "mill site" were fraudulently erased by some person unknown for the purpose and with the fraudulent intent of obtaining action upon the State selection favorable to the State of Nevada; that when said list 24 was taken up for action and certification the premises in controversy were certified and approved by reason of said fraudulent erasure; that in December, 1883, the said mill-site application was taken up for consideration when plaintiff first discovered that the lands had been certified to the State, and the fraud by which such approval had been received; that on May 22, 1882, said Williams made application to the State of Nevada to purchase said premises, and on February 2, 1884, the said State entered into a contract with said Williams for a sale to him of said premises under her laws, and to issue a patent to him therefor when the whole of the purchase price had been paid, and that by reason of said application, sale, and contract, the State refused to return said list for correction in respect to these premises; that the value of the land is more than $500, and by reason of improvements and the erection thereon of a quartz mine by Matthieson and Ward the land and improvements are of the value of $50,000; that said land, mill site, and improvements will pass to said Williams under his contract with the State unless said contract is amended and set

aside; that the Commissioner had made demand upon the Governor of Nevada for the return of said list, and the Governor had declined and refused to return the same by reason of said application of Williams, aforesaid, to purchase said premises, and that said defendant Williams, at date of his application and contract, knew of plaintiffs' demand for the return of said list, of its intention to annul and vacate the same, and also of the fraud by which the same had been procured. The bill thereupon prays a decree ~~adjusting~~ adjudging said list, so far as it includes said premises, to be null and void, and cancelling and setting aside said contract, and that Williams have and take nothing thereunder. (Record, p. 1 to 5.)

February 14, 1885, the defendant Williams, ~~appellee~~ appellant in this court, filed a demurrer to the foregoing bill of complaint and among the causes of demurrer specially assigned therein were the following (p. 11):

"That the foregoing facts shown in plaintiff's bill of complaint show that there is a written contract between the State of Nevada and the defendant, Joseph T. Williams; that the legal title to the land in controversy is vested in the State of Nevada, and that said title cannot be divested unless the State of Nevada is made a party defendant to the bill of complaint and have its day in court; that this honorable Court cannot make a decree in accordance with the prayer of the complaint 'adjudging that the certification and approval to the State of Nevada of the selection of lands described in list No. 24, as hereinbefore set forth, so far as the same embraces the lands hereinbefore specifically described, was null and void,' because the State of Nevada is not before the court, nor can any of its rights be adjudicated without notice or representation upon due process of law."

And also (p. 11):

"That this honorable court cannot in equity decree that a contract be cancelled and set aside upon the petition of a plaintiff who is not a party thereto and when

only one of the contracting parties is subject to the jurisdiction of the court."

And, also:

"That the title of the State to the land in controversy cannot be divested unless by due process of law (article 5, Constitution of the United States), and that the State of Nevada has not by any process been subjected to the jurisdiction of the court.

"That under the pleadings of the bill of complaint the decree prayed for in plaintiff's prayer cannot be made, because it asks a decree against the State of Nevada, when the State has not been made a party to the bill."

June 1, 1885, the defendant filed his answer to the bill. In this answer he admits the situation of the lands by the State as alleged, and the certification and approval of the same to the State, but denying that the premises in suit were not open to selection, and were not free from conflict with other claims; on the contrary, avers that the same were open to selection, and were free from conflicts. For further answer, defendant denies "that he made, or caused to be made, any erasure of records, fraudulent or otherwise, or had any knowledge of such erasure until he heard of the allegation of such erasure in December, A. D. 1883, as emanating from the Hon. Secretary of the Interior, at Washington, D. C."; or that such alleged erasure was a sufficient cause for withholding certification of list 24 or the Secretary's approval thereof; or was sufficient to induce such certification or approval; or that, if the alleged erasure had not been made, said list 24 would not have been certified and approved. For further answer, defendant avers that on the 22d day of May, 1882, the State received his application for said lands; that on the 2d day of September, 1882, the State selected said lands at the Eureka office, and the register and receiver certified the same to be open to selection and free from conflict; that in August, 1882, in

due course, the said register and receiver transmitted said list 24, including these premises, to the General Land Office; that as he, defendant, is advised, the said premises were, and are, unappropriated non-mineral lands within the meaning of the act of June 16, 1880; that he believes Matthiessen & Ward, by their attorneys, filed an application for the reinstatement of the desert land entry, together with a protest as alleged, and that on February 21, 1883, the same was overruled by the Commissioner; that on January 8, 1883, Matthiessen & Ward applied at the local land office for ~~protest~~ patent for a mill site on land embraced within said premises; that the register and receiver rejected the same on account of the State selection, and that, as he is informed, an appeal was taken from such decision. Defendant further avers that the whole subject-matter of the bill is *res adjudicata;* that at the time of the State selection there were no valid interfering rights; that this is shown by the certificates attached to the list; that list 24 was approved to the State by the Secretary of the Interior; that the application for the mill site is frivolous, and ought not to be entertained, and that when the desert land entry was cancelled the land became unappropriated non-mineral land within the meaning of the statute, and was subject to selection by the State. (Page 14 to 16.)

June 26, 1885, exceptions to this answer were filed (pp. 17–22) which were overruled September 21, 1885 (p. 22), whereupon issue was made by replication (p. 22).

March 17, 1886, plaintiff, upon leave granted (p. 44), filed an amended bill. This bill, so far as it embraced new or additional allegations of fact, was substantially as follows:

That on July 26, 1879, defendant executed and delivered to the New Philadelphia Silver Mining Company a deed for a portion of the land embraced in the desert land entry, receiving therefor a consideration of $5,000; that the said

company immediately erected a quartz mill thereon; that list No. 24, on its receipt at the General Land Office and at all times theretofore, was without the signature or attestation of any officer of the State and so remained when the lands were listed to the State and afterward until about September 12, 1883; that, at the date of the mill-site application, January 8, 1883, Matthiessen & Ward were the owners and in actual possession and control of a quartz-mill standing thereon and which has so stood thereon for more than two years prior thereto; that the business of the General Land Office is distributed among what are known as divisions consisting of a chief thereof and a number of other clerks; among which is one known as the "pre-emption and another known as the mineral divisions"; that since the act of Congress of June 16, 1880, matters arising under that act have properly been administered in the said pre-emption division while all matters pertaining to mill sites had been administered in the said mineral division; that list 24, when received, was placed in charge of said pre-emption division and the mill-site application in charge of the mineral division; that in addition to causing the words "mill site" to be placed on list 24, the Commissioner also directed both of said divisions that, when reached, the said applications should be considered as one cause or matter; that the action of the pre-emption division on the 3d day of May, 1883, is listing, and certifying said premises was done contrary to these instructions and without consideration of the mill-site application, and that, therefore, the said certification and approval were made by mistake, inadvertence, and misadventure. And as relief additional to that prayed in the original bill, it is asked that the defendant be perpetually enjoined against claiming any right, title, or interest under the said certification or the said contract; that he be directed to deliver up to the State all contracts or agreements that may give him, or appear to entitle

him, to any right, title, or interest in the premises, and that he be decreed to release and convey to the State any and all his rights, claims, or title to the same. (Pages 28 to 39.)

March 22, 1886, it was ordered, by consent, that original answer should stand as an answer to the amended bill (p. 45).

Upon the issue thus formed, voluminous testimony documentary and oral was taken, both in Nevada and in Washington; on the 9th day of November, 1886 (p. 46), the cause was submitted, and upon the 26th day of November, 1886, a final decree was made and entered declaring null and void the certification and approval to the state of the premises in controversy (the entire 160 acres) and setting aside and cancelling the same; setting aside and cancelling the contract of defendant of February 2, 1884, with the State and all contracts between said Williams and the State, affecting the premises and decreeing that he take nothing thereunder; perpetually enjoining and restraining the defendant against asserting any right, title or interest in said lands, under said certification or contract; directing him to surrender all evidences of title by him to the State; directing him to reconvey to the State, and finally decreeing that at the date of the State selections, the land was not unappropriated non-mineral lands, but appropriated and occupied as a mill site; that the certification was through fraud, inadvertence, or mistake, and null and void, and that by reason thereof, the officers of the United States were without authority to certify and list said lands to the State. (Pages 48, 49.)

November 27, 1886, an appeal was allowed (page 46), and the case thus reached this court for review.

The testimony taken so far as material or essential to the disposition of the appeal can be most advantageously referred to in discussing the assignments of error.

ASSIGNMENTS OF ERROR.

1. The Circuit Court erred in overruling the demurrer and in not dismissing the bill for want of proper parties. The legal title sought to be vacated is in the State of Nevada and the contract of sale sought to be annulled is between the appellant and said State. The State is therefore a necessary party to the proceedings, and for the reason that she was not made such the bill should have been dismissed.

2. The Circuit Court erred in finding from the testimony that the certification and approval of the land in question to the State of Nevada was procured by or was the result of fraud; or, if any fraudulent act or thing is established by the testimony, that it was the act of the appellant or of any one acting for him or in his interest.

3. The Circuit Court erred in decreeing the vacation of the certification and approval of the land to the State and ~~amendment~~ annulment of the contract between the State and appellant, and also as to all other portions of its decree adverse to appellant, even upon the facts as found, for the reason that upon the facts the action of the land department in certifying and approving the premises to the State was legally and substantially correct, and upon a re-examination thereof, under the established facts, the result would necessarily be the same.

First Assignment.

The certification and approval of the lands to the State passed the legal title as fully and effectually as the same could be effected by a patent.

Frasher *v.* O'Conner, 115 U. S., 116.

To vacate this title, even if good ground therefor in law existed, it was necessary for the United States to

assume the position of party plaintiff in a proceeding in equity.

U. S. *v.* Hughes, 11 How., 522.
Moore *v.* Robbins, 96 U. S., 530.
United States *v.* Miner, 114 U. S., 233.
Mullan *v.* U. S., 118 U. S., 271.

So proceeding and so appearing in the judicial forum, the United States assumed all the burden and obligations of a private party in such a position. She was obliged to call in all necessary parties, and failing to do so is subjected to all the consequences to be visited, under like circumstances, upon a private litigant.

United States *v.* Flint, 4 Saw., 42.
United States *v.* White, 17 Fed. Rep., 561.
United States *v.* Colgate, 21 Fed. Rep., 318.
United States *v.* Union Nat. Bk., 10 Ben., 408.
United States *v.* Tellow, 2 Lowell, 159.
Fink *v.* O'Niel, 106 U. S., 272.

It goes without saying that as between two private litigants, in like situation, no bill could be sustained under the circumstances of the case at bar. The very title sought to be vacated is vested, and solely vested, in a person not in any way made a party. And the contract sought to be annulled is one between the holder of such title itself and the appellant. The title itself could certainly not be vacated without calling in the holder, the immediate grantee of the plaintiff, and the contract certainly cannot be annulled in a suit against one of the contracting parties only. Suppose a case where A conveys land to B and B contracts to sell the same to C. A then asserts the right of vacation of title, the recovery thereof to himself, and, as incidental thereto, the recision of the contract between B and C. Can anyone be found who will seriously contend that this can be done in a

proceeding against C alone? To answer such a query is merely to state it.

The United States in the case at bar should, therefore, have made the State of Nevada a party to the suit, and the failure to do so can only be explained upon the theory that it was supposed a State cannot be sued by the United States. But whatever doubt may have once existed upon that point is now removed by the fact that the question has arisen in, and the right of the United States so to sue a State has been sustained by, this court, the present Attorney-General appearing therein for the United States.

United States *v.* North Carolina, 136 U. S., 211.

And the docket of the court also shows that a similar suit is now pending, in which the United States are plaintiffs and the State of Texas defendant.

If the right of the United States to sue a State in this court, under its original jurisdiction conferred by the Constitution, be conceded, it follows that as an incident thereto, other parties than the State necessary to a full disposition of the question, can also be found in such a proceeding. At any rate, so long as a judicial forum exists, where a State may be sued by the United States, it is clear that a title outstanding in the State cannot be vacated except in a proceeding in that court wherein the State is made a party.

We also think that independently of the original jurisdiction of the court under the Constitution, the United States may sue a State in the inferior judicial tribunals established by statute under authority conferred upon Congress by the Constitution.

It may be admitted that the Constitution does not expressly provide for such a suit by the United States against a State, but such a reservation and limitation is found therein by necessary implication.

The preamble recites that one of the objects in ordaining and establishing the Constitution was to "establish justice."

To effectuate this object article 3, section 1, declared:

"The judicial power of the United States shall be vested in one Supreme Court and such inferior courts as Congress may from time to time establish."

Article 3, section 2, declared:

"The judicial power shall extend to all cases, in law or equity, *arising under this Constitution, the laws of the United States, and treaties made or which shall be made under their authority;* to all cases affecting ambassadors, other public ministers and consuls; to all cases of admiralty and maritime jurisdiction; *to controversies to which the United States shall be a party;* to controversies between two or more States; between a State and citizens of another State; between citizens of different States; between citizens of the same State claiming lands under grants of different States; and between a State, or the citizens thereof and foreign States, citizens or subjects.

"In all cases affecting ambassadors, other public ministers and consuls, and those in which a State shall be a party, the Supreme Court shall have original jurisdiction. In all the other cases before mentioned the Supreme Court shall have appellate jurisdiction, both as to law and fact, with such exceptions and under such regulations as Congress shall make."

The rule by which this article of the Constitution should be construed, as embracing or excluding the judicial power, was early defined by the Supreme Court, whose utterances in this connection have peculiar pertinency to the question now under consideration.

In Martin *v.* Hunter, 1 Wheaton, 326, Mr. Justice Story, delivering the opinion of the court, said:

"This instrument, like every other grant, is to have a reasonable construction, according to the import of its terms; and where a power is expressly given in general

term it is not to be restrained to particular cases unless that construction grows out of the context expressly or by necessary implication."

Construing the words "the judicial power shall extend," the court (p. 331) said:

"We are of opinion that the words are used in an imperative sense. They import an absolute grant of judicial power. They cannot have a relative significance, applicable to powers already granted; for the American people had not made any previous grant. The Constitution was a new form of government, organized with new substantive powers, and not a mere supplementary charter to a Government already existing. The Confederation was a compact between the States, and its structure and powers were wholly unlike those of the National Government. The Constitution was an act of the people of the United States to supersede the Confederation, and not to be engrafted on it as a stock through which it was to receive life and nourishment."

And again at page 333:

"The judicial power shall extend to all cases enumerated in the Constitution. As the mode is not limited, it may extend to all such cases in any form in which the judicial power may be exercised."

The case at bar falls within two enumerated provisions: (*a*) It is a case arising under the Constitution and laws of the United States. (*b*) It is a controversy to which the United States is a party. Although no express declaration is found that it shall be competent for the United States to sue a State, yet here are two specifically enumerated provisions, either one of which, in its general scope, embraces that situation and case. The Supreme Court has declared that the language "shall extend" is imperative and mandatory, and that the direction of the Constitution thus imperatively expressed includes all enumerated objects. It must follow that the right of the

United States to sue a State, falling within these general enumerations, is embraced by the Constitution.

Second Assignment.

The Court below found that the testimony "fully sustains all of the material allegations of the bill" (opinion, page 433), that "a clear, palpable and confessed fraud was perpetrated upon the officers of the land department in procuring the certification of the lands" (*ib.*, page 335), and that such certification "was procured by fraud, palpaple and undisputed." (*Ib.*, 435.)

With great respect for the learned judge whose language in disposing of the case we have above quoted, we assert that it is almost incomprehensible how such conclusions can be drawn from the testimony presented. We submit with the utmost confidence that not only is fraud not "confessed" and "undisputed" (as is shown by bare inspection of the record) but that on the contrary there is no testimony worthy of the name tending to establish it, still less to connect it, if established, with the appellant or any one acting in his interest. Still further, there is no evidence to show but what the erasure of the words "mill site," the fraud alleged, was made at a time when it could result and only result in benefit to Ward and Matthiessen, the contestants of the State title, and presumptively at least was done in their interest.

In the recent case of the United States *v.* Maxwell Land-Grant Company, *et al.*, 121 U. S., 325, reaffirmed in the still later case of the Colorado Coal and Iron Company *v.* United States, the court defined the character and the amount of testimony requisite to sustain a suit of this character in these words:

"The deliberate action of the tribunals to which the law commits the determination of all preliminary questions, and the control of the processes by which this evidence of title is issued to the grantee, demand that to

annul such an instrument and destroy the title claimed under it, *the facts on which this action is asked for must be clearly established by evidence entirely satisfactory to the court, and that the case itself must be within the class of causes for which the instrument may be avoided*" (p. 379).

And again:

"It should be well understood, *that only that class of evidence which commands respect and that amount of it which produces conviction*, shall make such an attempt successful" (p. 381).

Proceeding in the light of this authority and the manifestly just rule therein laid down, we invite attention to certain facts, clearly, as we say, established by the testimony. It is greatly to be regretted that space, as well as due regard for the time of the court, will not permit a full and detailed statement of the testimony bearing upon the point. But it is voluminous, covering, perhaps, two hundred pages of the printed record, and we can only advance our propositions as to what is therein shown and illustrate the same with extracts from the testimony of certain of the witnesses.

The theory of the complainant is that this erasure was made at a time when the removal of the entry enabled the clerk in the pre-emption division to pass the case to certification without discovering a conflict with the mill site. In other words, that it was done *prior to the certification.* Further, that the annotation itself was made *prior to the certification.* Both of these facts must be established by testimony, commanding respect and producing conviction, before there can be any claim of fraud on the part of any one.

We assert:

1. That the testimony does not show that the annotation was made before the certificate.

2. That even if made before, that it was erased by any one prior to the certification.

3. That it is fairly deducible from the testimony that the erasure was made after certification.

4. That if so made after certification it must have been, and could only have been, in the interest of the mill-site claimants, by giving them the *foundation for the present suit.*

5. That it is entirely consistent with the testimony to find that the annotation itself and its erasure both occurred, after certification, for the very purpose last above indicated and that this could only have been done in the interest of the mill-site claimants.

1. Mr. Henry Howes, Chief of the Pre-emption Division of the General Land Office, at the time of the certification, testified that the annotation was made by him, upon the application for mill site being called to his attention. He is the only witness who pretends to fix the annotation prior to the certification, and it is apparent from his answers in extended cross-examination that he is so claiming, not from any recollection of the fact, but because he knows it ought to have been so upon the theory of the Government.

At page 52, on direct examination, he said:

Q. At the time you were in charge of the pre-emption division, had you occasion at any time to examine this list No. 24; if so, for what purpose?

A. I had, for the purpose of noting on the list against the selections for the east half of the southeast quarter of section 33, township 8 north, of range 50 east and the west half of the southwest quarter of section 34, township 8 north, of range 50 east, the words "mill site" in pencil,

said selections being embraced in a bracket against the words "mill site."

At page 64, upon cross-examination, he said:

Q. And you think Mr. Tyssowski was the gentleman from the mineral division who called your attention to the matter?

A. Yes, sir.

Q. Can you tell me when that was?

A. I think it was some few months after the list was received.

Q. I wish, Mr. Howes, that you would fix that matter as definite as you can without conveying in your answer any impression that you got from the examination of these papers. Just divest yourself of all matters pertaining to these papers, and tell me whether you have any recollection whatever as to the time when the communication was made to you?

A. I know at the time that this matter was presented to me that the selection was in the hallway, where we kept our selections—in the case in the hallway—and when my attention was called to this claim that I went into the hall and took the selection out of the case, and there noted upon it this annotation.

Q. Well, does that circumstance in any way enable you to fix the date of the occurrence?

A. No; but it was long prior to the listing.

Q. How do you know that?

A. Because the list had not been made up, and they were being pressed, I know, by the agent for the State to have these lists prepared.

Q. Well, why do you know that at the time you made the examination in the hall, and the annotation that the list had not been prepared for approval?

A. Because there would have been no object in noting it there then. The title would have already passed if it had been listed.

And that he made this annotation after and not before the certification is quite probable from the fact that he could not swear that the large figure, 2 (see page 73), put upon the list at the date of certification was not there at date of his examination (p. 74).

None of the witnesses for the United States have any knowledge whatever as to the time when the notation was made. On the other hand, Mr. E. C. Ford, the appellant's attorney in the General Land Office, at the time said list was pending (page 256 and 257), testifies as follows:

Q. In the discharge of your professional duties in that connection, when, if at any time, did you first examine or see the list of State selections already introduced in evidence as "Plaintiff's Exhibit B"?

A. I do not know the exact date when I first saw that, but it was soon after the list had been received in the Land Office and posted, I suppose.

Q. Did you at that time critically examine it with reference to these particular tracts of land?

A. I did.

Q. State whether or not, at that examination, you saw, noted on that list opposite these selections for the tracts in question, any reference to a mill site, or other conflicting claim.

A. I did not.

Q. When, if any time subsequent to this first examination, did you have occasion to examine this list again?

A. Some time between the 18th of January, 1883, and January 24, 1883, with respect to the mill-site application —the filing of the mill-site application.

Q. When was this second examination made?

A. The papers in the mill-site application were received in the General Land Office on January 18, 1883, and I examined the papers about that time, and prior to the 24th day of that month. I know this from the fact

that on the 24th of January I wrote to Mr. Williams the result of that examination.

Q. At this second examination of this list did you observe any notation whatever opposite these particular tracts?

A. I did not.

Q. Did you ever subsequently examine this list; if so, when?

A. I did, prior to the filing of an argument which was filed on May 7, 1883.

Q. Just before the filing of that argument?

A. Yes, sir.

Q. I understand, then, that for the third time you examined this list just prior to the filing of this argument?

A. Yes.

Q. State whether, at this third examination, you observed on that list any notation opposite these tracts?

A. I never at any time found any notation opposite to these tracts, to my recollection, prior to the listing of the land to the State, although I had examined it three times or more. I was going to say my reason for thinking so is that I have got my original notes of what was in the cases at my last examination, and I havn't any annotation on them whatever.

We respectfully submit that the weight of the above testimony, and we think that it is all there is in the case directly to this point, is against the proposition that the annotation was made prior to the certification. It certainly is not in the language of this court "clearly established by the evidence," by testimony commanding respect and producing conviction.

2. Even if it be conceded that the evidence shows that the annotation was made before the certification, it does not show that it was erased by any one prior to such certification.

Weak as the evidence adduced by the appellee is to prove that the annotation was made on the list prior to the certification, that adduced to prove that the erasure was made prior to that date is yet weaker. On the first proposition—as to when the annotation was made—Mr. Howes (and he only) pretends to have a faint recollection. Of the time when the erasure was made neither Mr. Howes nor any other witness has any knowledge or recollection whatever.

The only witnesses produced by the appellee who claimed to know of their personal knowledge anything of the appearance of the list with reference to the erasure were Mr. Howes and Barnes, but neither claims to have the slightest knowledge of the erasure itself.

Mr. HOWES testifies (p. 53) as follows:

Q. When did you first discover the changed appearance of the said note or memorandum?

A. I think it was in the month of May last that Mr. Johnson, a clerk in the pre-emption division, was examining a contested case in which either one or both of these tracts selected by the State was in conflict; that upon examining the records of the public lands division he found that both of the tracts embraced in Secs. 33 and 34, 8 N. and 50 E., had been approved to the State of Nevada under the act of June 16, 1880. When he informed me of this fact, I at once examined list No. 24 and found that the notation against said tracts, to wit, the words "mill site" had been nearly obliterated, so much so that I called upon Mr. Barnes, who made up the list for approval embracing those tracts, and asked him if he noticed the notation.

Afterwards (p. 59) the witness corrected his testimony so as to make December, 1883, the date his attention was first called to the listing.

Mr. BARNES testifies (p. 83) as follows:

Q. When was your attention first called to the fact, Mr. Barnes, of any alleged erasure of pencil marks on the list?

A. I cannot tell; I have no idea; it was some time after the certification of those tracts.

These are the only witnesses in this entire record who pretend to locate, howsoever indefinitely, the time of this erasure with reference to any other known date, and the extent of their testimony is that they first learned of it, Howes' seven months and Barnes' "some time" after the certification to the State.

3. It is at least a fair presumption that the erasure was made after the certification.

The list was received in the General Land Office in October, 1882. The lands in controversy and embraced therein were certified May 5, 1883. The first knowledge had by anybody of the so-called fraudulent erasure was in December, 1883. So that it will be seen that the period between the date of certification and the date when the alleged erasure was discovered was fully as long as the period between the date when the list was received and the date of the certification. It will be observed also that said list was as accessible and as free of inspection to Matthiessen & Ward and their attorneys during the former period as it was to the appellee and his attorneys during the latter (Testimony of Howes, p. 67). Why, then, in the absence of any evidence on the point, should it be presumed that said erasure, if fraudulently made at all, was made prior to the certification, and not after it?

4 and 5. If the alleged erasure was made after the certification it could only have been made in the interest of the mill-site claimants by giving them a foundation for this present suit.

It must be apparent, upon a momentary consideration, that after the certification the appellee could have no possible motive to make either the annotation and the erasure, or the erasure alone; not the annotation *and* the erasure, for that might operate in some degree as a cloud upon his title; not the erasure alone, for he could with perfect propriety and consistency urge that if the annotation was made admittedly prior to, and the erasure after the certification, that the officers of the Government must have been advised of the conflict and adjudicated the case by approving the selection, and afterwards erased the note of conflict as immaterial. Not so, however, of Matthiessen and Ward. After the list had been approved, and rightfully approved, as we contend, the mill site being no valid appropriation, their only remedy lay in the courts in such a suit as is now brought. For the annotation and erasure to have been made in their interest at this time and by them charged to have been made by the other side and prior to the certification, would have been logical and proper matter to allege in the bill to be thereafter brought to compel the vacation of the title.

There is no evidence to show by whom or in whose interest either the annotation or the erasure was made, and the presumption that they were made in the interest of Matthiessen and Ward is quite as strong as that they were made in the interest of the appellee.

We say again that the evidence on this point in support of the bill is clearly not "that class which commands respect, nor that amount of it which produces conviction."

In leaving this branch of the case we call your attention to the absolute and unqualified denials of both the defendant, Williams, and his attorney, Ford, of the charges of fraud contained in the bill.

Testimony of J. T. WILLIAMS (p. 364):

Q. It is alleged in the complaint herein that the words

"mill site," written in pencil, were erased by fraud by some one in the interest of Mr. Williams. Did you erase or did you cause anybody to erase those words "mill site"?

A. I never did.

Q. When did you first hear of such erasure being made?

A. I think it was about a year after the land had been listed.

Q. Then, of your own knowledge, you don't know that the words "mill site" were ever written on list 24, or erased therefrom.

A. No.

Testimony of E. C. FORD (p. 258):

Q. Colonel, I will ask you whether at any time you erased any note or memorandum from this list of State selections, or caused it to be done, or directed that it should be done by anybody?

A. I neither erased the same nor caused it to be done in any way, shape, form, or manner.

Q. Was Mr. Williams represented by anybody in Washington, with this matter, except you?

A. No one.

Q. Did any one in the interest of Williams have any access to those papers, or anything to do with them, except you?

A. There was a gentleman by the name of Patterson, who was doing some work for me at that time, who did see the papers.

Q. Where is Patterson?

A. I don't know—he is dead.

Q. How long has he been dead?

A. I should say for two years this spring.

Q. Did you give any instructions whatever to Patterson in respect to the erasure of any annotation upon this list?

A. I never did.

Q. Did he ever report to you in writing or otherwise that upon this list there was any annotation?

A. He never did, to my recollection.

III.

This assignment of error is based upon the general proposition that the Court will not vacate an outstanding title if the adjudication upon which it rests was not substantially erroneous, and if upon re-examination of the same question the tribunal dealing with the matter would, under the established facts, reach a like conclusion and issue a like title.

As applied to the case at bar and the facts therein established, this branch of the case resolves itself into three subordinate propositions, viz.:

1. The Court will not vacate a title if the adjudication upon which it rests is substantially correct.

2. The facts in the case at bar show that the certificate issued to the State of Nevada was properly issued; that the claim of the State was prior to that of any valid claim in Matthiessen and Ward, and that if the outstanding title were vacated and the case re-examined by the land department the result would be the same.

3. The authorities upon which the learned judge in the Court below seems to rest his decree are not applicable, or, if applicable, do not sustain the postion taken in the decision.

1. That the Court will not vacate a title if the adjudication upon which it rests is substantially correct, was distinctly announced in Lee *v.* Johnson, 116 U. S., p. 48, by Mr. Justice Field, delivering the opinion of the Court, who said:

"It is not enough that fraud and imposition have been

practiced upon the Department, it must appear that by the law properly administered the title should have been awarded to the claimant."

See also—

Sparks *v.* Pierce, 115 U. S., p. 408.
Bohall *v.* Dilla, 114 U. S., p. 47.

2. The facts in the case at bar show that the certificate issued to the State was properly issued; that the claim of the State was prior to that of any valid claim of Matthiessen & Ward, and that if the outstanding title were now vacated and the case re-examined by the land department the result would be the same.

These facts are as follows:

On May 19, 1879, the E. ½ of S.W. ¼, Sec. 33, and W. ½ of S.W. ¼, Sec. 34, 8 N., 50 W., together with other lands, were entered by the defendant, Williams, as a desert entry (No. 158, series of Eureka, Nevada). On July 26, 1879, the defendant executed and delivered a deed to the New Philadelphia Mining Company of a portion of the land embraced in his said desert entry, to wit, the E. ½ of S.E. ¼, 33, 8 N., 50 E., upon which said company proceeded to erect a quartz-mill. The New Philadelphia Mining Company becoming insolvent, the said quartz-mill, by mesne conveyances, finally became the property of Lebbeus B. Ward and Franz O. Matthiessen (Enclosure of plaintiff's exhibit D, p. 146). On May 20, 1882, the defendant, for reasons elsewhere shown, executed a written relinquishment of his said desert entry to the United States and filed same on June 9, 1882, in the local land office at Eureka, Nevada. On July 29, 1882, the State of Nevada executed an application for 160 acres embracing the land in question under the act of June 16, 1880 (21 Stat., p. 287). On August 12, 1882, the said desert entry was canceled by the General Land Office at Washington for relinquishment, notice of which was

received at the local land office on August 12, 1882, and on that day said desert entry was actually canceled on the records of the local office. On August 14, 1882, the application of the State of Nevada for the above-mentioned 160 acres was received at the local land office, and on the same date, to wit, August 14, 1882, the local officers at Eureka, Nevada, notified the State authorities that they might include said tract of 160 acres in their monthly list of selections, and in the month of October, 1882, the said local officers at Eureka, Nevada, in the due course of business, transmitted such list bearing date September 2, 1882, to the General Land Office at Washington, D. C. On January 8, 1883, the above-mentioned Franz O. Matthiessen and Lebbeus B. Ward made application at the local land office for five acres of land upon which the quartz-mill above referred to was located, for a mill-site under section 2337, Revised Statutes, said tract of five acres being embraced in the canceled desert entry of Williams and in the selection filed by the State of Nevada in the local land office on August 14, 1882, and embraced, also, in the list of selections bearing date of September 2, 1882.

The claim of the appellee is that the fact of the existence of the mill erected by the New Philadephia Company upon this tract reserved and appropriated the legal subdivisions upon which it is situated from the selection of the State of Nevada.

The act of June 16, 1880, above referred to, is entitled "An act to grant the State of Nevada lands in lieu of the 16th and 36th sections in said State." It grants 2,000,000 of acres in said State to the State in lieu of the 16th and 36th sections previously granted. The restrictions are all specified by way of proviso and the express limitations of section 2.

These limitations are three in number, viz.: That the land must be unappropriated; that it must be non-min-

eral; and that it must be land of the United States or public land.

It is undisputed that the premises in controversy are non-mineral in character, and, at the date of the State's selection, were lands to which the United States had full title. It was held, however, in the decree of the Court below and is contended by the appellee that the land was not in fact "unappropriated" at the time the State's selection was made and hence was not subject thereto.

Before proceeding to a discussion of the legal signification of the term "appropriation" it becomes necessary to ascertain the exact facts in the case at bar upon which the claim of appropriation is predicated.

It is undisputed that Williams conveyed his possessory right to eighty acres of the land embraced in his desert entry (which land was afterwards embraced in the State selection) to the New Philadelphia Mining Company, who erected a quartz mill thereon, and that this mill at the time of the cancellation of the desert entry, and at the time of the State's selection, was in the possession of the assignees of the Philadelphia Mining Company, Matthiessen & Ward, through their agent, Richard Gluyas.

The character of this occupation appears from the testimony of Mr. Ward (p. 109) as follows:

Q. Now, what sort of a title was it, Mr. Ward, you understood Williams had sold the New Philadelphia Mining Company? What was it?

A. I did not know at the time what Williams had. Subsequently we learned that it was a desert land entry, and I supposed at the time of the purchase from the New Philadelphia Mining Company it was an assignable interest.

Q. For what did the company buy the premises—for the purpose of reclaiming the lands under the desert land law?

A. I think the deed speaks of it as lands sold for the purpose of erecting a mill.

Q. Did they ever occupy it for any purpose except to erect a mill?

A. Not so far as I ever learned?

Q. Have you or your firm, as successors of the New Philadelphia Mining Company, ever used it for any other purpose?

A. No, sir.

Page 110:

Q. Matthiessen & Ward have filed a mill-site application for this tract, have they not?

A. Yes, sir.

Q. What is the date of that application?

A. It is, I think, January 10, 1883.

Q. What, if anything, prior to that time, had Matthiessen & Ward done in or about those terms in connection with the mill site? Had you ever done anything more than hold possession of it through an agent?

A. We purchased it.

Q. Subsequent to that purchase and up to the time when you applied for as a mill site, had you done any work upon it at all or done anything with it except to hold possession through an agent?

A. I have not.

Q. Then, at the date of your mill-site application, the only title you held to these premises you held by virtue of Williams' deed to the New Philadelphia Company upon an entry which he had relinquished. Is that true?

A. We held it under the deed of Williams through the New Philadelphia Silver Mining Company.

Q. Did you hold it under any other title whatever?

A. Only those which I have described.

Page 111:

Q. Have you described any other than the deed of Williams to the company?

A. Yes, sir; the deed of the New Philadelphia Mining Company to the receiver, and the receiver to us.

Q. You held at the time of that mill site application no title, except the title coming originally from Williams to the New Philadelphia Mining Company?

A. Yes, sir.

Q. And you have never done anything with the claim as a mill site up to that date, except to hold possession?

A. No, sir.

Q. What use have you made of the claim since that application to enter it as a mill site?

A. We have had no beneficial use of it.

Q. None at all?

A. No, sir.

Q. Did you ever make any location of this particular land as a mill site?

A. I do not know that I understand you, sir; the word "location" is technical, I suppose.

Q. Did you ever file any paper in the office of the local mining or county recorder in respect of a mill site?

A. Not to my knowledge.

Q. Well, you would know if you had done it, would you not?

A. I should.

Q. Do you know of its being done by your firm?

A. Not to my knowledge; it may have been done by our agent without his notifying us of having done so.

Q. Did you, prior to the application which you made for this land as a mill site, ever in any form set up a claim to it as a mill site?

THE WITNESS: Under the mineral laws, do you mean?

Mr. REDINGTON: Under any laws as a mill site.

Page 112:

A. The deed of Williams to the New Philadelphia Mining Company—

Mr. REDINGTON (interrupting): I am not asking about that. I am asking whether you or your firm set up prior to the application any claim to this land as a mill site.

The WITNESS: Will you allow me to answer the question without further interruption?

Mr. REDINGTON: I will allow you to answer the question with great pleasure if you will only attempt to answer it and not something else.

The WITNESS: I repeat what I said before: The deed of Williams to the New Philadelphia Mining Company conveys the land for the purposes of a mill site. The correspondence had with the General Land Office refers to it in the same terms, and a copy of the deed was attached to the latter which Abbett & Fuller addressed to the Commissioner in February, 1882.

Mr. REDINGTON: The examiner will please repeat the question that I have asked, and I again ask the witness to answer it.

The question was here repeated as follows:

"Q. Did you, prior to the application which you made for this land as a mill site, ever in any form set up a claim to it as a mill site?"

A. None other than what I have already answered.

Q. Did you ever file, either in the General Land Office or in the office of the register and receiver, any application to enter this land as a mill site prior to the date that you have already mentioned?

A. No, sir; January, 1883.

Mr. GLUYAS (p. 323) testifies:

Q. When was the application for mill site made by Matthiessen & Ward?

A. In January, 1883.

Q. When was the land certified to the State by the United States?

A. I think it was in May, 1883.

Q. When was the land in controversy certified by the land officers at Eureka to be open to selection by the State?

A. As appears by list No. 24, it was on September 16, 1882.

Q. When was the survey made for a mill site?

A. It was made in early December, 1882, as soon as we could get around to it after learning that the land had been selected by the State.

Mr. PREBLE (p. 326) testifies:

Q. What was the date of the selection by the State of the land in controversy?

A. September 2, 1882.

Q. What was the date of the approval of the land to the State by the Government?

A. May 5, 1883.

Q. From official communications to you can you tell the date of the application for mill site by Matthiessen & Ward?

A. From a letter from James Butler, chief clerk United States Surveyor-General's Office, I learn application for survey was made December 13, 1882.

It will be observed that Matthiessen & Ward held under deed from Williams and under his desert land entry from the date of their purchase up to the time of the cancellation of said entry for relinquishment. Williams could convey no greater or better estate than he had, and his title failing the estate of Matthiessen & Ward, whatever it was, failed also. On August 12, 1882, the land embraced in the desert entry of Williams, which included the land claimed by Matthiessen & Ward, reverted to, and became part of the public domain, by reason of the cancellation of said desert entry. What then was the title of Matthi-

essen & Ward between this date (August 12, 1882) and September 2, 1882, the date of the State selection, or between August 12, 1882, and August 14, 1882, the date the State's application to select was first received at the local office? As the above-quoted testimony shows, they asserted no claim against the United States until January 8, 1883, although for twenty days (the period between the time the land reverted to the Government and the time it was appropriated by the selection of the State) it was public land, and subject to entry by any qualified applicant. Not only did they assert no claim, but they initiated none, for the initial act before the Land Office in the institution of a claim under the mining laws, the application for a survey, was not performed until December 13, 1882, over two months after the State's selection (examination of C. S. Preble, p. 326). It is apparent, therefore, that at the date of the State's selection Matthiessen & Ward had nothing but a mere naked possession, which does not run against the Government or any purchaser under it, irrespective of any question of improvement on the part of such occupant.

Sparks *v.* Pierce, 115 U. S., p. 408.
Jourdan *v.* Barrett, 4 How., 169.
Burgess *v.* Gray, 16 How., 48.
Frisbie *v.* Whitney, 9 Wall., 187.
Gibson *v.* Chouteau, 13 Wall., 92.
Oaksmith *v.* Johnson, 92 U. S., 343.
Morrow *v.* Whitney, 95 U. S., 551.

The act of June 16, 1880, allows the State to select non-mineral land "unappropriated." This means any public land not regularly appropriated by virtue of some provision of law for its disposition; land covered by no valid ~~value~~ claim against the United States under any of its laws.

It is fortunate that this word, if ever of doubtful mean-

ing, was defined by the Supreme Court over forty years ago, and that the meaning then given it, has never since been questioned by the decision of any tribunal, judicial or executive. It has thus passed beyond the reach of controversy.

In *Wilcox* v. *Jackson*, 13 Pet., 498, the question arose upon the following facts: In 1804, the United States under the act of May 3, 1798, established a military post at the mouth of the Chicago river, and from that date until 1839, held an actual reserve about sixty acres of the public land for military and other purposes. In 1824 a formal withdrawal of the land from market was made by executive order.

During the time of this reservation one Baubien attempted to maintain a pre-emption claim to the same tract of land and procured an entry. He assigned his rights to the lessor of the plaintiff, who brought ejectment against Wilcox, then an officer of the United States in charge of the military post. The pre-emption law expressly reserved from its operations all lands "which may have been appropriated for any purpose whatever," and the question arose what constituted appropriation within the meaning of the act? Referring to the military reservation obove noted, and deciding this question, the Court said:

"Now, this is appropriation, for *that is nothing more nor less than setting apart the thing for some particular use.* But it is said that this appropriation must be made by authority of law. We think the appropriation in this case was made by authority of law." (P. 513.)

And again:

"We go further and say that wheresoever a tract of land shall have once been *legally appropriated* to any purpose, from that moment the land thus appropriated *becomes severed from the mass of public lands*, and that no subsequent law or proclamation or sale would be construed to

embrace it or to operate upon it, although no reservation were made of it." (P. 515.)

In the Leavenworth, etc., R. R. Co. *v.* the United States (92 U. S., p. 745) the court say, after quoting the above ruling in Wilcox *v.* Jackson:

"The principle asserted is sound and reasonable, and we accept it as a rule of construction."

But further, conceding, as the plaintiff charges, that the conflict between the mill-site application and the State selection was unknown to the officers of the General Land Office, and that the evidences of such conflict had been obliterated by the procurement of the defendant, it is immaterial, for even if the existence of such conflict *had* been known to such officers it would have been their duty, under the law and the practice of the Department, to have rejected the mill-site application, and to have certified the land to the State.

The questions which would have been raised in such a contest (between a mill-site application and a State selection in conflict therewith) are set forth in the record.

Mr. J. J. BARNES, the employé of the General Land Office, whose duty it was to adjudicate in the first instance claims of the State arising under this grant, testifies as follows (p. 81):

Q. You stated, Mr. Barnes, that the effect of an annotation of an adverse claim upon one of these lists in the pre-emption division has the effect to suspend that selection until the adverse claim is disposed of. You mean by that a prior adverse claim?

A. Yes, sir.

Q. If the claim was subsequent, that would not be the effect?

A. No, sir.

Page 82:

Q. Suppose there had been an annotation on that list of an adverse claim, and upon investigation by youself you should ascertain that it was an adverse claim initiated subsequently to the selection of the land by the State, you would not then have gone ahead and approved the State selection?

A. Well, it would have depended somewhat on the sort of a claim. If it was one for our division to adjudicate, why, of course—

Q. I am speaking now of a claim that is subsequent to the State selection.

A. If a mineral question was not involved, I would dispose of the adverse claim in the manner before pointed out.

Q. Any other adverse claim, if agricultural, what would have been done with it?

A. We should have approved the selection and canceled the adverse claim.

Page 84:

Q. Now, Mr. Barnes, if you had found such a conflict of a mill site with the selection, and, upon examination of the law, should find out that mineral lands were prohibited from being taken under mill-site applications, and that only agricultural claims could be taken under such an application, and that the mill-site application was subsequent to the State selection, would not the case fall under the rule which you have already referred to on your cross-examination, to wit, that the State selection would be certified and the other application rejected?

A. Well, I should suppose likely it would, but at the same time, if a case of that kind should come before me, not knowing anything about mill sites, I should make inquiry of somebody that was familiar with them and find out where it did belong.

Q. And if you found out that it was an agricultural claim would it not fall under the other rule?

A. Yes.

Q. You mean in such a case the pre-emption division would proceed to adjudicate the adverse claim rather than the mineral division?

A. No, I do not know as to that, because I do not know where such a claim would properly belong.

Q. But I say in case you found it was a mere agricultural claim, you would then, in the pre-emption division, proceed to adjudicate the matter without the necessity of sending it to the mineral division; but in either case it would be an adjudication?

A. Yes, sir.

Q. And if a subsequent application, it would be rejected and the State selection allowed?

A. Yes, sir.

Q. Is or is not a State selection, in the practice of the General Land Office and under the law as it is construed there, an appropriation of the public land in the same way as an entry is?

A. Yes, sir.

Mr. HENRY HOWES, chief of the division in the General Land Office, where this and similar cases were passed upon, testifies as follows (p. 69):

Q. Suppose you had a list in your division and any other division had called your attention to an alleged adverse claim subsequent to the State selection, I understand you to say that you would have approved the list of lands to the State and canceled the so-called adverse claim?

A. Ordinarily, yes.

Q. Suppose, upon an examination of the adverse claim, you found that the earliest date in which the claim, taken altogether, alleged an inceptive right against the United

States was subsequent to the State selection, you would then follow the same course of approval and cancellation?

A. Yes, sir.

In other words, only such agricultural claims as upon proper investigation proved to be valid under a law of the United States *and prior in point of time* to the date of the State selection reserved the land from such selection. The whole question as in the courts has always been regarded as one of prior "appropriation," and the significance of this term when contained in acts of Congress granting lands, except when thus reserved, has often been the subject of executive consideration.

In the case of Bovard *v.* Bunn, Copp's P. L. L., 803, the facts were in substance as follows:

In 1839 one Riggs applied at the Galena land office, Illinois, to enter land at private entry. His application, original certificate and receipt, the abstract, tract-book of the General Land Office and the patent, all called for the W. ½ S. E. ¼, sec. 29. The duplicate receipt given to Riggs by the local officers, however, was for the W. ½ S. W. ¼, sec. 29. It was duly recorded in the land records of the county where the land was situated on the day of its issue. In 1846, 1849, and 1850 this last-mentioned tract, the W. ½ S. W. ¼, was sold for taxes, and February 3, 1853, a sheriff's deed was given the purchaser, whose title in 1858 passed to one James Bovard. Bovard paid a valuable consideration for the tract, and from 1858 to 1871, the date of the contest, had been in actual possession of the same, living thereon, and had many lasting and valuable improvements. On the 10th day of April, 1870, one John W. Bunn made application to locate the said tract with Porterfield scrip. His application was allowed by the local officers, and their action was affirmed by the Commissioner, whereupon Bovard, who had in the meanwhile made several attempts to get the land by

private entry, appealed to the Secretary. That officer carefully examined the case, and took the written opinion of the Assistant Attorney-General thereon. The result was an affirmation of the Commissioner's decision, under the plain mandate of the statute, notwithstanding the manifest hardship involved.

In his opinion the Assistant Attorney-General said:

"Bunn has no standing whatever outside of the legal technicality which gives him the houses and lands of another man. *But the law is imperative and admits of but one construction.*

"The act authorizing the issue of Porterfield scrip (12 Stat., 836) provides that such scrip may be located 'on any of the public lands which have been or may be surveyed, and which have not been *otherwise appropriated* at the time of such location.'

"The language is broad—'*any lands*' not '*otherwise appropriated.*' This means any public land not regularly appropriated by virtue of some provision of law for its disposition. The tract of land in controversy is in this sense 'unappropriated.' It is covered by no valid claim against the United States under any of its laws. An erroneous marking on the books having deceived the public as to its *status* in the market, it has never been applied for or sold.

"The title of Bovard is that of mere naked possession, which does not run against the Government. He has never initiated a valid claim, and he is unable now to acquire the land at private entry on account of its temporary reservation from such disposition by law and the regulations of the Department. While the tract was in this condition, unoffered and unappropriated, an application was made to locate it with scrip which was applicable to this very class of lands.

"In my opinion it was the imperative duty of the local officers to accept the scrip and allow its location on the land in controversy."

And the Secretary, following this opinion, so held and decided.

Bovard had every equity possible to imagine, and he

was actually in possession and occupancy as a *bona fide* purchaser of a *prima facie* title, and had been for fourteen years. But the United States had never parted with its title, and was compelled to give it to Bunn, the first legal applicant. As stated by the Assistant Attorney-General, and decided by the Secretary, the land was "unappropriated," notwithstanding Bovard's possession and equities, and was, therefore, subject to location with Porterfield warrants.

During the following year the question was again raised against the application of one, Wm. P. Brown, to locate certain land with Porterfield scrip.

In 1863 the land involved had been withdrawn from private entry, but was restored in 1871. Subsequently the Commissioner directed the local officers to allow no entries until a correct subdivisional plat should be filed, there being some question in regard to the situation of the land claimed by Brown, under a Porterfield application, and a possible conflict with a prior patented pre-emption claim.

Brown's application had been rejected by the Commissioner, and, upon appeal, the Secretary, reversing the Commissioner's decision, said:

"The order of the Commissioner directing the local officers to refuse applications until after the filing of a subdivisional plat was not, I think, a revocation of the order directing that the land be restored to market, and did not affect the subsequent application of Brown, whose right should attach to the land, finally shown by the plat to be outside of that patented to the pre-emption claimant.

"There is another view of the case, which leads to a like result. Porterfield scrip is locatable on 'unoffered lands' as well as 'offered lands,' and the fact that a tract has been withdrawn from private entry by erroneous marking on the books of the local office, does not remove it from the possibility of such location. (Bovard *v.* Bunn, 1 Opin. Ass't Attorney-General, p. 267.) *I am of opinion,*

also, that a positive withdrawal from market does not, of itself, and without some provision of law requiring it to be withdrawn and disposing of the land, protect it, inasmuch as a withdrawal can hardly be called an 'appropriation,' and the statute makes the scrip applicable to any surveyed 'unappropriated' land."

In October, 1881, another case reached the Secretary's office, where the same question was again presented, argued, and decided.

In that case (Lewis *et al. v.* Seattle, Copp's Land Owner, vol. 8, p. 143), J. Vance Lewis and W. C. Hill had applied to enter with Porterfield Scrip certain lands *lying within the corporate limits of the city of Seattle, Washington Territory.* The same lands were claimed by the city authorities under the townsite laws, and by one Bywater and others under the pre-emption laws. The case was elaborately argued before the Commissioner, and afterwards, on appeal, before the Secretary, the claim of those contesting said application being that Porterfield Scrip could not be located upon unoffered land, upon land *within the corporate limits of a city, or upon land occupied adversely at the date of the application.* But the Secretary held otherwise, re-affirmed the previous decisions above cited and allowed the entries. In his decision, after referring to the case of Bovard *v.* Bunn, the Secretary said:

"I, therefore, concur in your opinion that the said scrip may be located upon offered or unoffered land, upon land within the limits of an incorporated town, and that no mere de facto appropriation can defeat or preclude the location of the same."

These are the leading cases to-day in the land department on the question of appropriation, and all of them announce distinctly that no *de facto* appropriation or occupation not under a law of the United States will defeat the granting provisions of a statute by the terms of which unappropriated public lands are granted.

Viewing the status of this land in the light of these authorities, judicial and executive, what is there to except it from the claim of the State? Where is the "setting apart of the thing for any particular use"? Where is the "appropriation made by authority of law"? Here was naked possession and improvement, and that only. Nor is any excuse possible for the laches of Matthiessen & Ward in not securing such appropriation. Had the cancellation of the desert entry and the selection of the State been simultaneous it might perhaps be argued that no opportunity was given for the presentation of the mill site claim, but this is not the fact. The relinquishment of the desert entry was filed in the local office June 9, 1882, and was finally allowed by order of the Commissioner of the General Land Office, and the entry canceled on August 12, 1882; the selection of the State was not made until September 2, 1882. Whether or not the plaintiffs actually knew between these dates that the land was open to appropriation is immaterial. They were bound to know, and cannot be heard to plead their own laches in not making proper inquiry.

Claims for mill sites under United States law are based upon section 2337, Revised Statutes, which provides:

"Where non-mineral land not contiguous to the vein or lode is used or occupied by the proprietor of such vein or lode for mining or milling purposes, such non-adjacent surface ground may be embraced and included in an application for a patent for such vein or lode, and the same may be patented therewith, subject to the same preliminary requirements as to survey and notice as are applicable to veins or lodes; but no location hereafter made of such non-adjacent land shall exceed five acres, and payment for the same must be made at the same rate as fixed by this chapter for the superficies of the lode. The owner of a quartz mill or reduction works, not owning a mine in connection therewith, may also receive a patent for his mill site, as provided in this section."

It may be claimed that if a *location* of such mill site

were properly made such location would be an appropriation, and would reserve the land from any further disposition. While the statute nowhere expressly provides for any specific act of location, as does section 2324, Revised Statutes, in relation to the rights of those claiming veins or lodes, yet, assuming for the sake of argument, that such location would be regarded as the inception of the mill-site claimants' right, and if properly made would appropriate the ground, how is the plaintiffs' case bettered?

If section 2337 must be held to necessitate a location as the inception of the applicants' title, it must be construed in connection with section 2324, as being in *pari materia*. Section 2324 provides: "The location must be distinctly marked on the ground, so that its boundaries can be readily traced. All records of mining claims hereafter made shall contain the name or names of the locators, the date of location and such a description of the claim or claims located by reference to some natural object or permanent monument as will identify the claim."

In the case of the Smelting Co. *v.* Kemp, 104 U. S., p. 649, the court say, defining a location under section 2324, Rev. Stats., "A location is the act of appropriating a parcel of land according to certain established rules. It usually consists in placing on the ground, in a conspicuous position, a notice setting forth the name of the locator, the fact that it is thus taken or located, with the requisite description of the extent and boundaries of the parcel according to the local customs, or since the statute of 1872 according to the provisions of that act, Rev. Stats., section 2324."

That no such location as is here defined has ever been made by either the New Philadelphia Mining Company, or their assignees, Matthiessen & Ward, is admitted. (See testimony of Mr. Ward, p. 110.)

Q. What, if anything, prior to that time (January, 1883),

had Matthiessen & Ward done on or about those terms in connection with a mill site?

A. We purchased it.

Q. Subsequent to that purchase and up to the time when you applied for as a mill site, had you done any work upon it at all, or done anything with it except to hold possession through an agent?

A. I have not.

Page 111:

Q. Did you ever make any location of this particular land as a mill site?

A. I do not know that I understand you, sir, the word "location" is technical, I suppose.

Q. Did you ever file any paper in the office of the local mining or county recorder in respect to a mill site?

A. Not to my knowledge.

Q. Well, you would have known if you had done it, would you not?

A. I should.

That no such location was, in fact, ever made on the ground is furthermore proved by the field-notes of the survey made of the mill site December 16, 1882, as a basis upon which to apply for patent (Plaintiff's Exhibit D, p. 150), where the Surveyor-General, after giving the usual description of the courses and distances, states: "No location corners found."

But it is unnecessary to pursue this line of inquiry further. It is admitted by Ward, and abundantly proved by the record, that no "location" of the mill site, as that word is used in sections 2337 and 2324, Rev. Stats., was ever made or attempted.

It will thus be seen that if either the application for survey in December, 1882, or the application for patent in January, 1883, be regarded as the starting point on

the part of the mill-site claimants, their claim must fail, because initiated subsequent to the State's selection. If a "location" is depended upon, made prior to the selection, their claim must fail, because the record shows conclusively that no such location was ever made or attempted. They were merely in occupation of the land, claiming under no law. Such occupancy, under the decisions above quoted, confers no rights as against the United States or those claiming under them.

3. The authorities upon which the Circuit Judge in the court below rests his decree are not applicable, and do not sustain the position taken in the decree.

Upon the facts shown by the record, the trial judge held, "It cannot be contended that the land was 'unappropriated and public land' at the time of its selection by the State, or at the date when it was listed to the State," and the cases of Atherton *v.* Fowler, 96 U. S., 573, Hosmer *v.* Wallace, 97 U. S., 575, and Trenouth *v.* San Francisco, 100 U. S., 251, are cited in support of such ruling. With all due respect to the learned judge, we say the cases cited utterly fail to support the principle announced.

In the former case (which was replevin for hay cut upon land claimed under a pre-emption settlement), the land had been within the limits of an alleged Mexican grant, but the claim for confirmation was decided adversely in March, 1862; and it was held that upon such decision the land became public land under the act of March 3, 1851 (*supra*). The land, however, after final decision, continued to be held in possession by tenants and purchasers under the supposed Mexican grant, and while so held it was forcibly invaded by persons who previously had no interest in it, and who dispossessed the occupants "under pretense of establishing a right of pre-emption to the several parts which they so seized."

The court below charged the jury as follows:

"If you believe from the evidence that the defendants entered in good faith, with intention to pre-empt the land on which the hay was cut, and had actual possession of it at the time the hay was cut, your verdict should be for the defendants."

The plaintiff requested the court to charge the jury:

"That if he was in actual possession of the land, having cultivated it for several years previously, and the defendants broke through his inclosure against his consent, the entry was unlawful, though the land might be public land."

This request the court refused.

It was held that the charge as given, and the refusal to charge as requested, was error, upon the ground that it was "obvious that the case was made by the court to turn on the assumption that the land was, in its then condition, liable to be pre-empted by defendants against the wishes of the plaintiff."

The Court, in further considering the case, said:

"The generosity by which Congress gave the settler the right of pre-emption was not intended to give him the benefit of another man's labor, and authorize him to turn that man and his family out of their home. It did not propose to give its bounty to settlements obtained by violence at the expense of others. The right to make a settlement was to be exercised on unsettled land; to make improvement on unimproved lands. To erect a dwelling-house did not mean to sieze other man's dwelling. It had reference to vacant land, to unimproved land; and it would have shocked the moral sense of the men who passed these laws if they had supposed that they had extended an invitation to the pioneer population to acquire inchoate rights to the public lands by trespass, by violence, by robbery, by acts leading to homicides and other crimes of less moral turpitude."

In the case of Hosmer *v.* Wallace, the doctrine in Atherton *v.* Fowler was reaffirmed, and it was held that—

"The right of pre-emption only inures in favor of a claimant when he has performed the condition of actual settlement, inhabitation, and improvement. As he cannot perform them when the land is occupied by another his right of pre-emption does not extend to it.

In that case, ~~as in the one at bar~~, the land in controversy was a part of a Mexican grant, but had been excluded by the approved survey of the tract confirmed, but continued in the possession of the grantee under the original grant, and the plaintiff claimed "a right of pre-emption to land excluded by the survey from the tract confirmed, although it was at the time in the occupation of the defendant."

The principle in these cases was again reaffirmed in the case of Trenouth *v.* San Francisco, 100 U. S., 251, wherein it was held that "the right of pre-emption under the laws of the United States cannot be acquired by intrusion and trespass upon lands in the actual possession of others." In that case the lands were claimed as against the pre-emptor "under a foreign title—that of the pueblo from Mexico."

The principle decided in all three cases was that the right of pre-emption must be exercised upon vacant land and not by trespassing upon land in the occupation of another. They decide nothing and undertake to decide nothing on the question of what constitutes a legal "appropriation" of the land. The reasoning in all of them is that as the right of pre-emption is based on actual settlement and residence it would be an invitation to "trespass, violence, robbery, to acts leading to homicides and other crimes of less moral turpitude to allow this right to be exercised on lands in the actual possession of another." But no reasoning of this kind can apply to an act like the one now under consideration, which pro-

vides for no settlement or residence on the part of the beneficiaries thereunder, and which simply provides that adverse " appropriation " shall bar its granting provisions.

Furthermore, in so far as these cases are germane to this issue, they are authorities in our favor.

In the case of Atherton *v.* Fowler, Page, whose executor Atherton was, was in possession of the land *under an act of Congress approved* March 3, 1865, which this Court held related back to the time of his original possession under the Vallejo grant, so that the intrusion of Fowler was made not only on occupied land, but also on land occupied and claimed under the act of March 3, 1865.

In the case of Hosmer *v.* Wallace the defendant was in possession claiming as a purchaser under the seventh section of an act approved July 23, 1866, entitled "An act to quiet land titles in California." The claimed right of the plaintiff to pre-empt was rejected on the authority of Atherton *v.* Fowler, the land being in the actual possession and occupation of the defendant claiming under the act of July 23, 1866.

In the case of Trenouth *v.* San Francisco the defendants, who were trustees of certain land in the city of San Francisco, were in possession under an act approved March 8, 1866, entitled "An act to quiet the title to certain land in the city of San Francisco," and the right of the plaintiff was rejected on the ground that " the possession obtained by the intrusion and trespass of the plaintiff's grantors constitutes no ground for equitable relief against the holders of the city title." In this case the defendant's possession was under the act of March 8, 1866.

So that it will be seen that in each of these cases the party in whose favor this court gave judgment was in actual possession, *claiming under a law of the United States,* and this under the rule laid down in Wilcox *v.* Jackson was an " appropriation," a " setting aside of the thing for some particular use."

How, then, can the above cases be cited in support of the proposition that an act granting lands without any conditions of prior settlement and residence, and which makes adverse "appropriation" the disqualifying element, will not take land which was not claimed under any act of Congress, and which was occupied and improved by such adverse occupant merely?

Not content with charging fraud against Williams and his agents in the matter of the alleged erasure of the words "mill site" on the list of selections while in the General Land Office, a studied and labored attempt appears on the part of Matthiessen & Ward, in the testimony of their witnesses to show that Williams acted in bad faith from the very beginning in endeavoring to procure the title to the land in question for himself.

Mr. Ward in his testimony (p. 103), says substantially that he and Matthiessen were stockholders in the New Philadelphia Mining Company, a company which had purchased the land in controversy from the appellant in 1879, and erected the quartz mill upon it. The company became embarrassed and went into the hands of a receiver, and the property was first sold in Nevada for its debts under certain judgments, and subsequently sold by the receiver in New York; it being created by the laws of that state. Matthiessen & Ward purchased from the receiver, and also from the sheriff of Nye County, Nevada, in 1887. From the records they knew that Williams had sold to the New Philadelphia Mining Company, for a consideration of $5,000.00, and on the faith of that deed made their purchase. They claim that Williams had agreed to relinquish his desert entry at the expiration of three years, and that he was willing to do this in such a way and time as would enable Matthiessen & Ward to take the land by State selection; that he violated his agreement, and without the knowledge of said Matthiessen & Ward filed the relinquishment of his

desert entry, and at the same time made application at the state land office to purchase the tract under an act of the State legislature, approved March 5, 1873 (Plaintiff's Exhibit A, p. 38).

This transaction on its face would seem to argue bad faith on the part of appellant, but giving effect to the maxim of "audi alteram" and the nature of the proceeding changes very materially. It appears that in 1879 appellant bonded to the New Philadelphia Mining Company six mining properties, certain water rights, and the mill site now the subject of controversy for $25,000 on the terms and conditions named in the bond, which bond was subsequently extended for one month. Before the extension had expired the agent of the company in New York wrote appellant and requested him to secure United States patents for the bonded mines, and that he (appellant) would be reimbursed for expenses. This appellant did. In the meantime the company's agent represented that the said company were anxious to go on at once with the erection of a mill and urged appellant to give them a deed for a mill site, assuring appellant that as soon as the patents on the mining claims got beyond protest in the local office he would pay him $20,000 and 5,000 shares in the company's stock. Appellant accordingly made a good and sufficient deed, and the company thereupon paid $5,000 on their contract. When the patents passed beyond protest in the local office appellant demanded the fulfillment of the obligation. To this the company replied that they must have United States patents, which appellant procured, and again demanded that the company comply with their agreement, offering at the same time to make deeds. At this time the agent of the company, Clayton, left for the East, representing to appellant that he would endeavor to have the company settle with him and pay their debts. He did not return, and soon after the company got into litigation among themselves.

When the three years allowed by law (act of March 3, 1877), for reclamation had nearly expired, Williams found that he was not able to bring water upon the land embraced in his desert entry in sufficient quantity to reclaim it, and that he would not be able to make his final proof as required by law. As it was understood between Williams and the company that Williams was to get United States title to all the properties, to the mining claims under the mining law of May 10, 1872, and to the mill site under the desert land act (it being situated on land embraced in his desert entry), Williams was in a dilemma. The company owed him money and he could not afford to give them any excuse for its non-payment. On the other hand, he could not do as he at first intended and convey a good title under the desert land act, as (owing to no fault of his own) he could not comply with its provisions. He, therefore, determined to get title to the land in another way so as to be able to convey a good title to the company for the tracts in question upon payment by them of the amount due. (Testimony of Williams, p. 365.)

Q. Did you not endeavor to procure the title to this land from the State, so as to have it in your power to comply with your contract with the New Philadelphia Mining Company's agents, as evidenced and stipulated by the exhibits in evidence, upon the fulfillment of their part of the contract?

A. I did.

It will, therefore, be seen that the acts of the appellant throughout were only in accordance with the law of self-preservation. The company had not complied with its contracts, and owed him money. He was obligated to convey a good title to a certain part of the land embraced in his desert entry. It became impossible to do so under the desert land law, owing to natural causes. He adopted

another means to acquire the legal title to the same land, and stands ready to convey such title upon the payment of the consideration named in the bond, viz., $20,000, and the money expended in procuring the patents in conformity with the subsequent contracts and agreements.

We ask that the decree below be reversed, and that the bill be dismissed.

Respectfully submitted,

JNO. H. HICKCOX, JR.,
JAMES K. REDINGTON,
Counsel for Jos. T. Williams.

Office Supreme Court U. S.
FILED,
JAN 20 1891
JAMES H. McKENNEY
CLERK.

In the Supreme Court of the United States.

OCTOBER TERM, 1890.

JOSEPH T. WILLIAMS, APPELLANT,
vs.
THE UNITED STATES. } No. 157.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF NEVADA.

BRIEF FOR THE APPELLEE.

In the Supreme Court of the United States.

OCTOBER TERM, 1890.

JOSEPH T. WILLIAMS, APPELLANT,
vs.
THE UNITED STATES. } No. 157.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF NEVADA.

BRIEF FOR THE APPELLEE.

STATEMENT.

The case here presented is upon an appeal from a decree of the circuit court for the district of Nevada, made November 26, 1886, and involves, as between the appellant and the United States, the right of the appellant to obtain and hold the ownership of and title to 160 acres of land (and the whole thereof), situate at Hot Creek, in Nye County, in the State of Nevada.

THE BILL OF COMPLAINT.

The suit is brought by direction of the Attorney-General, as appears by the bill of complaint (p. 1 of Record) and by the amended bill of complaint (p. 28).

The substance of the amended bill and papers therein referred to is, that May 19, 1879, the defendant Williams made a desert-land entry at the United States land office at Eureka, Nev., for 240 acres of land; that July 26, 1879, Williams executed and delivered a deed to a mining company of 80 acres of said land and received $5,000 therefor; that the said company erected a quartz mill thereon, at a cost of over $50,000; that three years thereafter, on May 20, 1882, the defendant executed a written relinquishment of said desert-land entry, and on the same day applied to the register of the local land office at Eureka, Nev., to purchase 160 acres of land—a portion of the said desert-land entry and including the whole of said 80 acres, described in Williams's deed to the mining company; that this relinquishment was filed June 9, 1882, in the local land office at Eureka, and from thence it was forwarded to the General Land Office at Washington; that July 29, 1882, the State of Nevada executed an application of that date for said 160 acres; that August 4, 1882, the Commissioner of the General Land Office at Washington ordered said desert-land entry to be canceled, and said order of cancellation was received at Eureka, in the local land office, August 12, 1882, and the desert-land entry was actually canceled that day of record at that office.

That on the 14th of August, 1882, the local land office at Eureka received the application of the State of Nevada

for said 160 acres of land; that this application of the State of Nevada bore date July 29, 1882, and was based upon an application of Williams to the State of Nevada, dated May 20, 1882, and filed with the register of the State land office of Nevada May 22, 1882; that on the same day, August 14, 1882, the register of the United States local land office at Eureka notified the State authorities that they might include said tract of 160 acres of land in their monthly list of selections for the month of August, 1882.

That September 2, 1882, the State of Nevada selected a list of lands to be approved to that State by the United States; that this was done under the act of Congress of June 16, 1880, entitled "An act to grant to the State of Nevada lands in lieu of the sixteenth and thirty-sixth sections in said State" (being 21 Stats., 287); that this list of lands was presented to the United States local land office at Eureka, September 2, 1882; that it included said 160 acres of land; that in October, 1882, the register and receiver of the United States local land office at Eureka transmitted said list of lands selected by the State of Nevada to the General Land Office at Washington; that October 12, 1882, this list was received at the General Land Office in Washington, being list No. 24, and was duly filed and made of record in that office; that the said list was on its receipt and at all times thereafter without the signature or other attestation of any officer or agent of the State of Nevada, and so remained without signature or verification when the lands so listed were erroneously certified to the State of Nevada (May 3, 1883), and

the said list continued without signature or attestation until on or about September 12, 1883.

That list No. 24 embraced not only the 80 acres in question and 80 acres in addition, making in all 160 acres, but also embraced other lands; that while the said list of lands was without signature or attestation as aforesaid the Secretary of the Interior of the United States, upon the certification of the Commissioner of the General Land Office at Washington, approved the lands embraced in List No. 24 (including said two tracts of 80 acres each) to the State of Nevada; that the said Commissioner of the General Land Office certified that the lands embraced in List No. 24 were open to such selection and free from conflict with other claims upon the belief that they were so, whereas in fact the said lands were not so open to selection to the State of Nevada and were not so free from conflict with other claims; and that the action of the Commissioner of the General Land Office was induced either by the fraudulent erasure of records by some person whose name was unknown to the United States, acting in the interests of the defendant Williams, or through mistake, inadvertence, or misadventure of some officer or employé of the United States.

That the facts and circumstances under which the lands were certified and approved and the fraudulent acts of mistake, inadvertence, or misadventure which induced such certification are fully set forth in said amended bill.

It is especially set forth that at the date of the certification there was pending in the land office at Eureka an application for a patent for a mill site of 5 acres, which was a part of said 160 acres of land, being a portion of the 80-

acre tract conveyed by the defendant Williams to the New Philadelphia Silver Mining Company, and also a part of the other 80 acres of land, which two said tracts of 80 acres each formed the 160 acres hereinbefore referred to, and which was the land which Williams was endeavoring to obtain through the State of Nevada under his application to it of May 20, 1882, and by the action of that State in seeking to acquire the land in order to convey it to him.

(This application of Williams will be found, Record, p. 312, folio 595.)

This shows that Williams under an act of the State of Nevada entitled "An act to provide for the selection and sale of lands that have been or may hereafter be granted by the United States to the State of Nevada," approved May 5, 1873, and the acts amendatory thereof and supplemental thereto (see p. 385, etc.), applied for the purchase of these 160 acres of land, for which he agreed to pay the State of Nevada at the rate of $1.25 per acre.

The bill avers (p. 33, fol. 81) that the signature and certification of the United States Commissioner of the General Land Office and the signature and certificate of the Secretary of the Department of the Interior were made and obtained to and upon the "clear list" by mistake, inadvertence, and misadventure, and that the said "clear list" was upon the day of its date and ever since has remained and now is false and fraudulent, particularly as to the E. ½, SE. ¼, sec. 33, and the W. ½ SW. ¼, sec. 34, T. 8 N., R. 50 E., in the State of Nevada (these making the 160 acres aforesaid).

At page 34 (folio 82) the bill states that while the State selection No. 24 was in the General Land Office at Wash-

ington it was subject to inspection, and was inspected by the parties in interest for the State of Nevada, or by the defendant Williams, and their agents and attorneys, and that before the list was taken up for action by the Commissioner the words "mill site" on the margin of the list, denoting a conflicting claim, were erased or partially erased by some person unknown for the purpose and with the fraudulent intention of obtaining action upon the State selection embraced in said list No. 24 in favor of the State of Nevada, and thus aid the application of Williams to the State for said 160 acres of land; that the said list No. 24 was taken up for action and certified by the Commissioner by mistake, and certified and approved to the State of Nevada by reason of such fraudulent erasure of said marginal note of conflicting claim; that this erasure was not discovered until December, 1883, when the mill-site claim was taken up for action.

That there was afterwards a contract entered into between the State of Nevada and Williams for the purchase of said land, a copy of which is found on page 6 of printed case, marked Exhibit A, which bears date February 2, 1884.

It is shown (p. 35) that the State of Nevada and its officers and agents refused the request of the Commissioner to return the State selection No. 24 to the General Land Office for correction of the mistake made in the certification and approval of the lands therein; and that they stated they would proceed to patent the tract to the defendant Williams unless restrained by order of the court (p. 35). That thereupon the Secretary of the Interior telegraphed to the governor of Nevada December

15, 1883, his intention to have proceedings commenced to set aside the certification of the aforesaid tracts to the State of Nevada unless the list was returned to the United States General Land Office; that the governor replied that the said tracts of land had been applied for and contracted to the defendant Williams, and that he therefore declined to return the said clear or approved list to the General Land Office.

The bill also sets forth that Williams, before entering into the contract with the State, February 2, 1884, had full knowledge of the claim and demand of the United States, and of its determination to annul and vacate the certification of said list No. 24 so far as it affected the lands described which had been contracted for by Williams with the State of Nevada.

The bill further sets forth (p. 36) that Williams entered into a contract with the State of Nevada February 2, 1884, with full knowledge of the fraud alleged hereinbefore, with full knowledge of the false and fraudulent manner in which the certification of the land to the State of Nevada had been procured, and with full knowledge of the determination of the United States to annul and vacate the certification of list No. 24, so far as it affected the lands he had contracted for by his contract of February 2, 1884.

The bill further sets forth (p. 36) that under the act of Congress of June 16, 1880, the State of Nevada was not entitled to select that portion of the 160 acres of land on which was erected the mill and improvements which are on the mill site applied for, and which were there at the time the certification was pending before the Department

at Washington; that the lands embraced within the mill site were not unappropriated public lands, but were at the time of the passage of the act of June 16, 1880, in the possession of the New Philadelphia Silver Mining Company, having said mill and improvements thereon, and that the defendant, Williams, well knew at the time he applied to the State of Nevada to purchase said lands (May 20, 1882) that the same had been occupied as private lands prior to June 16, 1880, and ever since that date, and that they had been so occupied under and by virtue of the deed which he had given to the New Philadelphia Silver Mining Company July 26, 1879, and that relying upon which said company had placed over $50,000 of improvements on said lands; that the selection of said 160 acres in list No. 24 was void because it embraced said mill site, and the selection was not within the act of Congress of June 16, 1880, and because of the knowledge of Williams that at the time he applied for the purchase of said lands from the State of Nevada (May 20, 1882), the same were so occupied as aforesaid, and that the application of the State of Nevada was in the interest of and for the purpose of transferring said lands to said Williams.

The bill further states that the 160 acres of land (being a portion of the desert land entry No. 158) did not come within the terms of the act of Congress of June 16, 1880 (p. 36, fol. 87), because at the date of said act said desert land entry was uncanceled and existing of record as an appropriation of said lands upon the books of the Land Department, both at Eureka, in the State of Nevada, and at the General Land Office at the city of Washington, and that at said date said 160 acres was not unappropriated public

land, but was, in fact, appropriated by virtue of said desert land entry, and that the said Williams was aware of this fact, he having made application therefor, and it being still in his name at the date of his application to the State of Nevada, May 20, 1882.

The prayer for relief is found at page 37 of the record.

It prays that the certification and approval of said lands to the State of Nevada be declared null and void so far as the 160 acres applied for by Williams is concerned; also, that the contract between Williams and the State of Nevada for the sale of said land to Williams be canceled and set aside; and that said Williams take nothing under or by virtue of said contract, in order that the said "clear list" may be returned by the State of Nevada and its officers and agents to the General Land Office at Washington, for the correction of the mistake set forth in the bill, and in order that the conflict between the selection of the State of Nevada in list No. 24, and the application for a patent for a mill site may be determined and adjusted in the United States Land Office according to law.

It further prays that Williams be perpetually enjoined against claiming any right, title, or interest under the certification of the lands in question to the State of Nevada contained in said "clear list," which was founded upon List No. 24, and, further, that he be perpetually enjoined against making any claim under any contract with the State of Nevada in reference to said lands, or any part thereof, and that he be directed to deliver up to the State of Nevada, to be canceled, all contracts or agreements that may be given him or appear to entitle him to any right, title, or interest in said lands in

controversy, the title to which was derived from or under said List No. 24, and further that he be decreed to execute and deliver to the State of Nevada a formal and proper instrument, which can be recorded, by which he should convey and release to the State of Nevada any and all right, claim, or title which he may have or claim to have in said lands in controversy.

THE DECREE.

By the decree appealed from (pp. 40–42), it was among other things considered, ordered, and decreed that at the time of the selection of the lands in controversy by the state of Nevada (under the act known as the two-million-acre grant (21 Stat. 287), said lands were not subject to such selections, and were not unappropriated nonmineral lands, but were appropriated and occupied as the mill site for a stamp quartz mill, said mill having been previously erected, and that the certification of said lands to the State of Nevada was through fraud, inadvertence, or mistake, and null and void, and that, by reason of the premises, there was no authority or jurisdiction in the officers or agents of the Government of the United States to certify and list said lands to the state of Nevada. And it was also ordered and decreed that the certification and approval by the United States of the lands in question to the state of Nevada, "Was, and is, null and void, and the same is hereby set aside and canceled;" said decree also directing that any contract made between said State and the appellant Williams, appearing to give to him any interest in said lands derived from, under, or through such certification and approval, be set aside and

canceled, and that appellant take nothing thereunder; and restraining said appellant perpetually against claiming any right, title, or interest in or to said lands under said certification, or under such contract, and also directing appellant to deliver up for cancellation such contracts, and to execute and deliver a proper instrument conveying and releasing all title, right, or claim he may have in or to said land.

THE OPINION.

The opinion of the court below appears (pp. 428–436).

At page 433 the two questions which are stated to arise in the case are presented as follows:

> First. Was the land in controversy, at the date of the selecting and listing the same to the State, "unappropriated and non-mineral public land" within the meaning of said act (act of June 16, 1880). There is no contention but that it is non-mineral land, and this qualification, therefore, need not be considered.
>
> Second. Was the listing of the land in suit obtained through or by means of the fraudulent acts of any party or parties, or by the inadvertence, mistake, or misadventure of any of the officers of the General Land Office charged with the duty of listing and approving the same to the State.

The court, after reviewing the case, says (p. 434, fol. 903):

> Under this state of facts it can not be contended under the repeated decisions of both national and State courts that this land was "unappropriated public land" at the time of its selection by the State, or at the date when it was listed to the State.

The court, upon the testimony, holds (p. 435, fol. 906) as follows:

> A clear, palpable, confessed fraud was perpetrated upon the officers of the Land Department in procuring the certification of the land. Frauds of this and like character have always been held sufficient ground for vacating patents procured thereby.

The court also says (p. 435, fols. 906, 907):

> It may be observed that the certificate indorsed upon the "clear list" passing the title is qualified, not absolute, and evidently designed to reserve the rights of any parties interested. The list is approved "subject to any valid interfering rights which may have existed at the date of selection." * * *

Again, the court says (p. 436, fols. 908, etc.):

> It should not for a moment be supposed that the State or any of its officers took any unusual or improper interest in this matter. When the attention of the governor of the State was called to the matter he very properly declined to issue a State patent for the land, and suggested that legal proceedings be instituted to determine the rights of the parties. It is not probable that the State would ever claim to be the owner of this mill and improvements, even were not the listing annulled as to these lands. It could not afford to acquire property in that manner.

The court says (p. 436, fol. 910):

> This suit is in the interest of public right and justice—to correct a public wrong and fraud perpetrated upon a department of the Government.

STATEMENT OF FACTS.

[Much irrelevant matter appears in the record. Counsel for appellee will seek to follow the example of the

court below (opinion, p. 436, fol. 909) and disregard such irrelevant evidence.]

The material facts established by the testimony are as follows:

In May 1866, the appellant, Joseph T. Williams, became an inhabitant of said Hot Creek, and has ever since remained such. (Rec., p. 370.)

May 19, 1879, Williams made a desert-land entry of 240 acres, embracing the land in controversy (p. 15).

1879, July 26, Williams conveyed by deed to the New Philadelphia Silver Mining Company "in consideration of the sum of $5,000 gold coin of the United States of America to him in hand paid by the said party of the second part" all the right, title, and claim, both in law and in equity, to 80 acres of land situated in Hot Creek, Nye County, Nev., being the E. ½ SE. ¼ Sec. 33, T. 8 N., R. 50 E., with water rights and so forth, the said grantor covenanting as follows:

> And the party of the first part, for himself and his heirs, doth hereby agree to and with the said party of the second part that he has full right and power to sell and convey the premises and water rights, and that the said premises are now free and clear from all incumbrances, sales, or mortgages made or suffered by said party of the first part. (Pp. 146, 223, 24.) (330.)

In August, 1879, said company took possession of said land and it and its successors have continued in possession of the same ever since (pp. 300, 301).

Between the first of August, 1879, and the last of June, 1880, said company constructed upon said land and nearly

completed a 10-stamp quartz mill at an expense of nearly $58,000 (p. 300).

July 12, 1880, the sheriff of said Nye County sold to Lebbeus B. Ward said 80 acres of land upon an execution issued on a judgment obtained by Ward against said company (pp. 147, 148, 443).

April 15, 1881, the Silver Mining Company conveyed said land to Henry B. Stanton, the receiver of said company (pp. 146 and 213).

September 16, 1881, said receiver conveyed the same to Franz O. Matthiessen and Lebbeus B. Ward (pp. 148, 229).

December 2, 1882, said Ward conveyed to said Matthiessen an undivided one-half interest in the said company's mill and mill site and other property (p. 148).

The land in question remained in the possession of said New Philadelphia Silver Mining Company until February 1, 1881, since which date it has been in the possession of said Matthiessen and Ward (p. 303), and of the facts of building and possession appellant had full knowledge (p. 370).

Section 14 of "An act to organize the Territory of Nevada," passed March 2, 1861 (12 Stats. 214), enacts:

> That when the land in said Territory shall be surveyed under the direction of the Government of the United States, preparatory to bringing the same into market, sections numbered sixteen and thirty-six in in each township in said Territory shall be, and the same is hereby, reserved for the purpose of being applied to schools in the States hereafter to be erected out of the same.

Section 7 of the act of March 21, 1864, under which Nevada was admitted as a State (13 Stats. 32), enacts:

> That sections numbers 16 and 36, in every township, and where such sections have been sold or otherwise disposed of by any act of Congress, other lands equivalent thereto in legal subdivisions of not less than one quarter-section, and as contiguous as may be, shall be, and are hereby, granted to said state for the support of common schools.

June 16, 1880, Congress passed an act, which is as follows (21 Stats., 287):

CHAP. 245.—An act to grant the State of Nevada lands in lieu of the sixteenth and thirty-sixth sections in said State.

> Whereas the legislature of the State of Nevada on March eighth, eighteen hundred and seventy-nine, passed an act accepting from the United States a grant of two millions or more acres of land in lieu of the sixteenth and thirty-sixth sections therein, and relinquishing to the United States all such sixteenth and thirty-sixth sections in said State as have not been heretofore sold or disposed of by said State, and which act of said State is in words as follows, to wit:
>
> "An act accepting from the United States a grant of two millions or more acres of land in lieu of the sixteenth and thirty-sixth sections, and relinquishing to the United States all such sixteenth and thirty-sixth sections as have not been sold or disposed of by the State.
>
> "The people of the State of Nevada, represented in senate and assembly, do enact as follows:
>
> "SECTION 1. The State of Nevada, hereby accepts from the United States not less than two millions of acres of land in the State of Nevada in lieu of the sixteenth and thirty-sixth sections heretofore granted to the State of Nevada by the United States: *Provided*,

That the title of the State and its grantees to such sixteenth and thirty-sixth sections as may have been sold or disposed of by the State prior to the enactment of any such law of Congress granting such two millions or more acres of land to the State shall not be changed or vitiated in consequence of or by virtue of such act of Congress granting such two millions or more acres of land, or in consequence of or by virtue of this act surrendering and relinquishing to the United States the sixteenth and thirty-sixth sections unsold or undisposed of at the time such grant is made by the United States.

SEC. 2. The State of Nevada, in consideration of such grant of two millions or more acres of land by the United States, hereby relinquishes and surrenders to the United States all its claim and title to such sixteenth and thirty sixth sections in the State of Nevada, heretofore granted by the United States, as shall not have been sold or disposed of subsequent to the passage of any act of Congress that may hereafter be made granting such two millions or more acres of land to the State of Nevada: *Provided*, That the State of Nevada shall have the right to select the two millions or more acres of land mentioned in the act: Therefore,

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That there be, and are hereby, granted to the State of Nevada two million acres of land in said State in lieu of the sixteenth and thirty-sixth sections of land heretofore granted to the State of Nevada by the United States: *Provided*, That the title of the State and its grantees to such sixteenth and thirty-sixth sections as may have been sold or disposed of by said State prior to the passage of this act shall not be changed or vitiated in consequence of or by virtue of this act.

SEC. 2. The lands herein granted shall be selected by the State authorities of said State from any unappropriated, non-mineral, public land in said State in quantities not less than the smallest legal subdivision; and when selected in conformity with the terms of this act the same shall be duly certified to said State by the Commissioner of the General Land Office and approved by the Secretary of the Interior.

SEC. 3. The lands herein granted shall be disposed of under such laws, rules, and regulations as may be prescribed by the legislature of the State of Nevada: *Provided*, That the proceeds of the sale thereof shall be dedicated to the same purposes as heretofore provided in the grant of the sixteenth and thirty-sixth sections made to said State.

SEC. 4. This act shall take effect from and after its passage.

Approved June 16, 1880.

October 26, 1880, a circular of regulations prescribing the procedure under said act was issued by the Acting Commissioner of the General Land Office, which circular provides as follows (Rec., p. 205):

* * * * *

In order to facilitate the business of selections under this act, I have to call your attention to the following:

1st. The whole area to which the State of Nevada is entitled under this act is two million acres (2,000,000).

2d. The act requires the selections to be made "from any unappropriated non-mineral public land in said State in quantities not less than the smallest legal subdivision."

3d. The selection must be based upon the official

township plats of the public surveys, which are required to be approved by the surveyor general and on file in the local land office at the time of filing the selection.

4th. No selection is admissible upon any land to which a pre-emption or other valid claim shall be legally established, nor on any land which is or may be reserved from sale by any law of Congress or proclamation of the President of the United States, nor upon any tract which is reserved or withdrawn from market for any purpose whatever excepting lands which have been withdrawn or returned by the surveyor general as mineral in character. * * *

5th. The selecting agent of the State should file in your office an authenticated copy of his letter of appointment or other satisfactory evidence of his authority, and it is important and necessary that he should make such careful and thorough preliminary examination as will enable him to select lands to which there may exist no valid claim by pre-emption or otherwise, and to avoid embarrassments and delay consequent upon such conflicts you will also examine the plats, records, and paper in your office before the lists of lands so selected are filed, and see that such selections are in all respects free from such objection.

Herewith you will receive the form of a list to be used for selection. This form requires the date to be given when the list is filed in your office, such date being regarded as the date of selection, so that in the event of pre-emption or other conflicts the question as to priority of right may be properly settled. The lists should bear a regular series of numbers from No. 1 and should be signed by the agent. * * *

The provisions of law enacted by the State of Nevada regulating the disposition of lands granted to it by the United States, are set forth (Rec., p. 385–393).

Section 12 of the act of March 5, 1873 (p. 389) enacts that—

> An occupant or party in possession shall have a preferred right to purchase not exceeding 320 acres of land at the minimum price, for the period of six months after the date of approval to the State of the lands occupied or possessed by him or her, and when two or more persons claiming a preferred right by reason of occupancy or possession apply to purchase the same lands the register shall certify such applications to the district court of the county, etc.

June 20, 1881, Stanton, as receiver, wrote to the Commissioner, giving him notice of his receivership and of the company's interest in the Nevada lands, upon which it had erected a valuable mill, and asking instructions as to steps to protect and complete the title (p. 249).

February 10, 1882, Hon. Leon Abbett obtained an interview with the Commissioner, and in pursuance thereof wrote to that officer in behalf of Matthiessen and Ward, February 21, inclosing copies of deeds and agreements to be placed on file in the Land Office, including the deeds from Williams to the New Philadelphia Silver Mining Company, and that from the company to Stanton, receiver, and that from the receiver to Matthiessen and Ward, before mentioned, and requesting a hearing, if any application should be made by Joseph T. Williams or others named, or their grantees, for any of the land or water rights embraced, etc. (p. 15, 211–12).

March 9, 1882, Commissioner McFarland answered Governor Abbett's letter acknowledging receipt of its inclosures. Referring to the desert-land entry (made by Williams) No. 158, the Commissioner says that the "De-

partment neither recognizes transfers nor assignments of lands in desert-land entries, nor considers such transactions as disqualifying the party to the original declaration from consummating entry by making satisfactory proof of reclamation of the land and payment" (p. 250).

April 14, 1882, said Commissioner answers the foregoing letter of Stanton (dated June 20, 1881) and says that the Secretary of the Interior decided, April 15, 1880, that desert-land claims are not assignable; that no rights pass to the purchaser, and that patent, if issued, must issue to the party making the entry (p. 252).

May 23, 1882, the Commissioner advises Ward that there is no evidence on file in his office showing a relinquishment by Williams of the desert-land entry No. 158 (p. 251).

June 25, 1882, Richard Gluyas, agent of Matthiessen and Ward, in possession of the premises in controversy, wrote to F. H. Hinckley, register of the United States land office at Eureka, Nev., making inquiry as to any changes in Williams's desert-land entry, etc. (p. 321).

August 3, 1882, said Hinckley made answer:

> Mr. Williams has informed me that he would try and procure the cancellation of his desert-land entry. We have received no notice as yet of the cancellation of said entry (p. 321).

This statement is so clearly against the facts that the Commissioner, upon ascertaining them, demands an explanation (p. 253).

May 20, 1882, appellant Williams prepared and executed papers for the cancellation of said desert-land entry No. 158 (pp. 15, 207, 365, 373-4, 418).

June 9, 1882, said relinquishment was filed in the local land office and was then forwarded to the General Land Office at Washington, where it was received on the 16th of said month. August 4 the case was reached in the Department, and a letter of cancellation was sent to the register and was noted on the tract books of the local office August 12, and acknowledgment made August 21 (p. 207; see also appellant's answer, p. 15).

September 6, 1882, application was made on behalf of Matthiessen and Ward for a reinstatement of said desert-land entry, and protest was entered against embracing in the State selection (List 24) the 80 acres of section 33 held by them (p. 207–9, 254).

February 21, 1883, said application was refused by the Commissioner (p. 100, 128).

May 20, 1882, said appellant made his application dated on that day to the register of the State land office, under section 9 of said State law of March 5, 1873 (which section relates to the sale of agricultural lands), for the purchase of the E. ½ SW. ¼ sec. 33, T. 8 N., R. E., and also the adjoining W. ½ SW. ¼ sec. 34, comprising 160 acres (and covering the land in controversy) at the rate of $1.25 per acre, which application was filed in said register's office May 22, 1882 (pp. 312, 313).

July 29, 1882, Nevada executed an application for said 160 acres of land; and August 14 the same was received at the Eureka United States land office, and thereupon the register notified the State authorities that they might include said 160 acres in their selection for August (P. 429).

August 31, 1882, the State of Nevada made out a statement of lands claimed to be selected under the United States act (21 Stat., 287), called list No. 24, which statement included said 160 acres, and made application therefor; and said list was filed in the United States land office at Eureka September 2 of said year, and the same was received and filed in the General Land Office at Washington, October 12, 1882 (pp. 131, 132, 429).

The appellant was examined as a witness upon the trial below and this evidence appears (p. 371, fol. 739):

> Q. Did the State select the land in controversy at your instance and upon your application?
> A. I suppose they did.

The said selection list No. 24 was not duly executed, not being signed by the State register, and was not duly attested, when the lands therein listed were erroneously certified to the State, May 5, 1883, but said list was sent back from the General Land Office to Nevada for signature September 12, 1883 (pp. 69, 325, 326).

The court below does not pass upon this question, but says (p. 434, fol. 904):

> The validity of such attestation, at said date, Sept. 12, 1883, is not now passed upon, as it is not necessary to a determination of the case.

THE MILL SITE APPLICATION AND APPEAL.

January 8, 1883, Matthiessen and Ward, as owners in possession of the buildings and property affected, made, in due form, an application to the United States for a patent of 5 acres (according to survey and plat made pursuant to law) of land as a "mill site," said land then being occu-

pied by them, and being a portion of original desert-land entry No. 158, and being parts of sections 33 and 34 aforesaid (pp. 85, 142–145).

Said application was immediately rejected by the United States register and receiver at Eureka—

> For the reason that the land herein applied for is embraced in a selection made in list No. 24, filed in this office September 2, 1882 (p. 145).

[The regulations of the Department embracing the statute as to the obtaining of title to mill-sites appear in the Record, page 188.]

Whereupon an appeal was duly taken by Matthiessen and Ward from such decision of such register and receiver to the Commissioner of the General Land Office at Washington (p. 145).

January 10, 1883, the application for the mill site and the accompanying papers, with the appeal, were transmitted by the register to the Commissioner of the General Land Office, by whom they were received January 18 (p. 94).

This mill-site application and appeal then became a pending claim in the General Land Office in conflict with the claim of Nevada under list 24 (pp. 52, 55, 68, 69).

January 23 Curtis & Burdett, attorneys, of Washington, appeared in the case of the application for a patent, for the applicants, and asked to be advised of any action taken (p. 159).

Soon after the receipt of said appeal by the Commissioner, and long before the certification of the lands in controversy to the State by clear list No. 2, the officers of

the Government having selection list No. 24 in charge, noted in pencil, within brackets, on the list against the selection of E ½, SE. ¼, Sec. 33, T. 8, R. 50 E., and the W. ½, SW. ¼, Sec. 34, same township and range, the plainly written words "Mill site." (Pp. 52, 53, 64, 74, 75.)

This memorandum was made for the purpose of noting the conflict and of preventing the certification by the United States to Nevada of the land claimed adversely until the contest should be decided. (Pp. 52, 53, 55.)

Upon the receipt at the General Land Office of lists of State selections, the practice of office is shown to be as follows (p. 76):

> When the lists are received they are handed to the bookkeepers for posting on the tract books. That is the first thing. After that they are returned to the pre-emption division, and in due course are taken up for examination as to conflicts, the right of the State to select the particular land, and all matters pertaining to that selection. If the selections were found to be free from adverse claims they were embraced in a clear list and submitted to the Commissioner and to the Secretary of the Interior for approval. If the list was approved it was returned to the division and a certified copy was made and transmitted, under the seal of the office, to the governor of the State, and a copy also sent to the local office of the district in which the land selected was situated.

The effect of the annotation of the words "mill site" as stated was to suspend action upon the lots against which the entry was made until the adverse claim had been investigated or removed; and so long as the entry

appeared and the contest remained undetermined those lots would remain uncertified to the State (pp. 77, 79, 83).

Under the practice of the Land Office, the Nevada selection list 24 passed into the preëmption division (Division G) of the office for examination and determination; while the mill-site claim and appeal, November 19, 1883 (p. 97), passed to the mineral division (Division N) of the office for a similar purpose.

The respective cases thus rested in the early part of 1883.

February 21, 1883, the Commissioner, after declining to reinstate the desert-land entry upon request of Matthiessen and Ward, says to them:

> The question of the validity of the State selection will be determined in due course of action thereon by this office (p. 128).

February 24, 1883, the Commissioner, in order to prevent separate action by either division upon the respective claims to the lands in controversy, directed that the mill-site case and the matter of the State selection of the same land should be considered in connection (pp. 86–7, 94, 143).

February 9, 1883, there was filed in the General Land Office the appearance of Mr. E. C. Ford, of Washington, for the claimant of the lands in controversy, "as against the application of F. O. Matthiessen and L. B. Ward for a mill site embracing a portion of said land," and saying:

> I desire the usual time for the examination of the papers and the filing of argument (p. 157).

March 29, it was arranged that there should be delay for a time (pp. 87, 94).

April 5, a protest and argument were filed in the General Land Office in behalf of Matthiessen and Ward against the State selection of the land in controversy, and asserting their claim to the 5-acre mill site (pp. 58, 132–142).

May 7, an answer to the foregoing by said Ford as attorney for the appellant Williams, and recognizing the applicant for the mill site as claimants of record, was also filed in said office (pp. 72, 259, 290.)

August 23, 1883, while the cases were supposed to be pending to be considered in connection as before stated, the Commissioner made the case of the application for the mill site special (p. 90, 94).

Soon after the clerk having the matter in charge in the mineral division obtained the list, 24, and discovered that it had not been signed by the selecting officer of the State, whereupon it was sent back for signature; after its return and in December, 1883, the case was taken up, when it was discovered that the land in controversy had been certified to the State on the 5th day of May, or about seven months previously (pp. 59, 95, 126, 202, 319, 320).

After this discovery all further action in relation to the mill-site application and appeal ceased (pp. 96, 97).

It appears from the evidence that list 24, while awaiting action in connection with the mill-site case, was kept with certain "school files" in unfastened cases standing in a hall of the preëmption division, and that such papers were subject to examination and handling by attorneys or agents of parties claiming to be interested. The practice allows the attorney or agent to send in his card from the

attorney's room designating the papers which he wishes to examine and to receive the temporary custody and control of the papers so designated (pp. 54, 67, 77).

Upon examining the papers to ascertain how it had happened that the lots in conflict, including the lands of the mill-site claim, had been certified to the State as free from conflict, it was found that some person had managed to erase and destroy the pencil memoranda of "mill site" upon the margin of list 24, so that when the clerks reached the matter of this State selection they found no reference upon it to the mill-site claim, or the conflict or adverse claim, and hence they proceeded to make out clear list 2 approving the lands to the State, and said clear list was formally, and in the ordinary course of routine business, and without inspection, signed by the Land Commissioner and by the Acting Secretary of the Interior and transmitted to the State of Nevada (pp. 57, 78, 203).

A terse and instructive statement of the facts relating to this portion of the case is presented in a letter from Commissioner McFarland to Mr. Secretary Teller, which bears date January 19, 1884, and is as follows (pp. 202–204):

> DEPARTMENT OF THE INTERIOR,
> GENERAL LAND OFFICE,
> *Washington, D. C., January* 19, 1884.
>
> HON. H. M. TELLER,
> *Secretary of the Interior:*
>
> SIR: I have the honor to state that on May 5, 1883, a list of lands selected by the State of Nevada under the provisions of the act of Congress of June 16, 1880, entitled "An act to grant to the State of Nevada lands in lieu of the 16th and 36th sections in

said State (21 Stat., 277, 278), was approved by you upon my certificate; that the tracts embraced therein had been duly examined and found to be subject to said selection and free from conflict. It has since been discovered that said list embraced certain tracts to which the right of selection had not been determined by this office or Department at the date of such certification and approval, but material questions relative thereto and involving the rights of adverse claimants were then pending before me in regular proceedings on appeal from a decision of the district land officers at Eureka, Nev. The certification and approval referred to were fraudulently obtained under the following circumstances:

On May 19, 1879, Joseph T. Williams made desert-land entry No. 158 at the Eureka, Nev., land office, embracing, among other tracts, the S. ½ SE. ¼ sec. 33 and the W. ½ SW.¼ sec. 34, T. 8, R. 50. On May 20, 1882, Williams executed a written relinquishment of said entry, which relinquishment was filed in the district land office June 9, 1882, and thereon the entry was canceled by Commissioner's letter to the register and receiver, dated August 4, 1882, received at the local office August 12, 1882.

In October, 1882, the register and receiver transmitted to this office, with their regular monthly returns, a list purporting to be list No. 24 of selections by the State of Nevada under the act of Congress of June 16, 1880, which was certified by the register and receiver to have been filed September 2, 1882, their certificate bearing date September 16, 1882.

This list was not signed by the selecting agent. On September 6, 1882, Messrs. Curtis & Burdett, as attorneys for Messrs. F. O. Matthiessen and L. B. Ward, filed in this office an application for the reinstatement of desert entry No. 158, together with a protest against so much of the aforementioned selection as

embraced the E. ½ SE. ¼ sec. 33 and the W. ½ SW. ¼ sec. 34—3—50, claiming to have derived an interest in said land by purchase from Williams through intermediate parties, and to have expended a large sum of money, to wit, more than $50,000, in erecting a stamp mill thereon.

On January 8, 1883, Messrs. Matthiessen and Ward made application at the local office for a patent for a mill site on lands claimed by them within tracts embraced in Williams's original entry. The register and receiver rejected the application for the reason that the land applied for was included in a selection made by the State of Nevada in list No. 24, filed September 2, 1882. From this decision applicants on the same day appealed to this office. The application, appeal, and accompanying papers were transmitted by the register January 10, 1883, and were received here January 18, 1883.

On February 21, 1883, I denied the application for a reinstatement of the desert-land entry, stating in reference to the accompanying protest that "the question of the validity of the State selection will be determined in due course of action thereon by this office." (See Copp's Land Owner, June 1, 1883, p. 69.) After receipt by this office of notice of the mill-site claim adverse to the claim of State selection a note of the conflicting claim was made on list, No. 24 by writing in pencil in the margin of said list, opposite the tracts in controversy, the words "mill-site." This is the customary method of denoting the existence of a claim adverse to a State selection, and such note operates as a suspension of action upon the State selection until the adverse claim has been disposed of.

In the present case this note of suspension was fraudulently erased by some person unknown to me, and when list No. 24 was taken up for action and no

note of adverse claim appeared thereon, owing to such erasure, all lands embraced in said list were, with other lands, included in different lists, certified and approved, as hereinbefore stated.

I transmit herewith original list No. 24, which shows the erasure above referred to. While this list was before this office, and previous to certification and approval, it was subject to inspection and was inspected by parties in interest. No person could have had any interest or motive in making such erasure except parties claiming under the State selection or their agents. That the erasure was made for the purpose of fraudulently obtaining favorable action upon said selection is the only conclusion that can be drawn from the facts and circumstances of this case.

In December, 1883, the mill-site claim was called up for consideration and action in connection with the claim of State selection, when it was ascertained that the land had been approved to the State, as above set forth, and the discovery was made of the method by which such approval had been secured. Thereupon I telegraphed the governor of Nevada (under date of December 11, 1883), requesting him to return said list. The governor replied, under date of December 5, 1883, that the register of the (State) land office, by the advice of the attorney-general, considers it his duty to patent the land referred to unless restrained by order of court.

On December 15, in response to departmental inquiry, the governor telegraphed you that the land referred to had been appplied for and contracted to J. T. Williams, but that patent had not been issued (by the State). On December 18, the governor addressed a letter to you, declining to return the approved list, and stating that he saw no other course than to let a court of equity determine the right to the land.

On December 29 I addressed a letter to Mr. George W. Merrill, State land agent for Nevada, who was then in Washington, requesting to be informed whether any communication had been received by him from the governor since the 18th of said month which would indicate a disposition to either return the list or relinquish to the United States any title the State may have derived to the tracts of land in question through the approved list. Mr. Merrill replied, on December 31, that nothing had been received from the governor since the 18th.

Having exhausted every effort to obtain a voluntary relinquishment of the illegal certification, I respectfully recommend that the Attorney-General be requested to cause the proper proceedings to be instituted to obtain a judicial decree declaring said list null and void so far as the same embraces the E. ½ SE. ¼ sec. 33, and the W. ½ SW. ¼ sec. 34, T. 8 N., R. 50 E., and that Joseph T. Williams, of Nevada, be joined as a party to such suit. * * *

Upon the discovery, in December, of the improper certification, the officers of the appellee sought to correct the wrong done, and on December 11 Commissioner McFarland sent the following telegram (p. 293.):

[Telegram.]

[Received at Carson, December 11, 2.30 p. m. Dated Washington, D. C., 11, 1883.]

To Governor of Nevada, Carson City, Nev.:

East half southeast quarter section thirty-three, and west half southwest quarter section thirty-four, township eight north, range fifty east, inadvertently approved May third, last, in clear list number three, Eureka, Nevada, under two-million-acre grant. Please return approved list.

The request was responded to December 13th as follows:

> The register of the land office, by advice of the attorney-general, declines to return the clear list, as requested by you. He considers it his legal duty to patent the land referred to by you unless restrained by the court.
>
> J. W. ADAMS,
> *Governor.*

(P. 295.)

December 14 the Secretary of the Interior sent the following telegram:

> Received at Carson Dec. 14, 4.03 p. m. Dated Washington, D. C. —— 14, 1883.]
>
> *To Governor of Nevada, Carson City, Nev.:*
>
> Has land mentioned in dispatch of Commissioner, of 11th instant, been sold and deeded, or either? If so, to whom? Unless the list can be returned and corrected I desire to have proceedings commenced immediately to set aside the certification.
>
> H. M. TELLER, *Secretary.*

(P. 295.)

At this point the appellant Williams appears above the surface and sends the following telegram from Washington (p. 295):

> [Received at Carson December 14, 4.46 p. m. Dated Washington, December 14, 1883]
>
> *To Governor Jewett W. Adams or W. M. Garrard:*
>
> Have deed for my State land claim executed immediately. Give Harry Day money if he has not got it; will remit from Hot Creek. Don't delay. Answer.
>
> JOS. T. WILLIAMS.

That the appellant had full knowledge of the proceedings in the premises and was an active participant therein is clearly shown by this telegram.

December 15, Secretary Teller telegraphs to C. S. Preble, State register, Carson, Nev. (p. 307):

> Tract inadvertently certified while adverse claim was pending and undecided. Much embarrassment will result to Department if list be not returned as requested.

On the same date he receives the following telegram (p. 296):

> CARSON, NEV., *December* 15, 1883.
>
> To H. M. TELLER, *Washington, D. C.:*
>
> The land referred to is applied for and contracted to J. T. Williams, but no patent is yet issued.
>
> J. W. ADAMS, *Governor.*

On December 16th the Governor telegraphs to Secretary Teller that "inquiry at Eureka discloses the fact that no adverse claim has been filed on land described;" and asks, "Why do you wish the list returned?" (P. 298.)

December 31, 1883, Geo. W. Merrill, agent for the State of Nevada, wrote from Washington to the governor of that State:

> The particular piece of land in controversey and embraced in the list in dispute was marked in pencil to be excluded from the approved list forwarded to Preble, but by some mistake, oversight, or intentional erasure on the part of some one the tract was included in the approved list.
>
> The cause of the intended exclusion was the fact that the New Philadelphia Company claimed it, and

> an appeal was pending before the Commissioner here, and of course it should not have been listed to the State until the pending controversey had been decided. * * *
>
> (Pp. 298, 299.)

Other communications in the premises appear (pp. 306–310), but they do not essentially change or modify the foregoing.

The application of Williams to the State of Nevada, dated May 20, 1882, for the purchase of the land erroneously certified (160 acres of sections 33 and 34) appears (p. 312), and the contract dated February 2, 1884, and the substitute contract, dated November 25, 1885, between Williams and the State, are set forth on pages 312, 313, 316, and 317, respectively.

Thus it appears by the record that the land covered by the mill-site application and appeal still awaiting action in the mineral division of the General Land Office, was, by the wrongful erasure complained of, contracted to the appellant at a purchase price of $1.25 per acre, and is claimed to be held by him by virtue of such contract, so obtained.

The practical question presented by this appeal is, whether this court must establish Williams, the appellant, in his position, or whether it will sustain the court below in rendering null and void, so far as Williams is concerned, the proceedings and acts by which he has reached that position, and by which he maintains himself therein.

It is respectfully submitted that, under the case presented by the foregoing facts, the appellant can not ask to have his contention established without asking the judicial approval of fraudulent devices.

POINTS.

The United States has an interest in this controversy.

First, in its relations to the public—to prevent imposition upon it by fraud.

Second, because it would be entitled to $5 an acre for this mill site, and therefore it has a pecuniary interest as well as a moral interest in the controversy.

Third, because it is under obligation to the mill-site applicants to secure to them their rights under the laws.

If it is alleged by the other side that Matthiessen and Ward could claim under Williams's deed in a controversy between them, the answer is that that deed does not embrace all of the mill site, and also that Williams had given a prior deed to Campbell which embraced the whole of this mill site in question, as shown by Exhibit M, page 334, printed transcript of record.

Besides, the United States has the right to vindicate the honesty of its Departments, by its own action, without casting that labor upon those who deal with it.

I.

Attitude of the State of Nevada.

The State of Nevada refused to return the "Clear List," which included the 160 acres of land applied for by Williams, because it had made a contract with Williams and it did not deem it proper to determine the question as against Williams in view of this contract. The State therefore took the position that it would give the patent to Williams unless the United States should

take proceedings to have the matter determined in the courts in a proper controversy with Williams. The State took the position of being entirely indifferent in the controversy, leaving the question to be decided by the courts.

The State of Nevada was entitled to have certified to it a certain number of acres of land, under the act of June 16, 1880, and under its law the State of Nevada had usually asked to have lands certified where an application was made by some one under the act of May 5, 1873.

In the present case Williams had applied to the State, under the act of 1873, that it make application to the United States for the certification of these 160 acres of land to the State, so that the State could sell it to him under the act of 1873, and the State at his request had made the application. It was of no interest to the State, because if this particular tract of 160 acres had not been granted to it, the State would have been entitled to another 160 acres and would have received from some one else the same price therefor as was to be paid by Williams for this tract.

The State of Nevada is waiting for the final disposition of this case. If the determination of the circuit court as to the fraud and as to the imposition upon the United States Government be upheld, there can be no doubt as to what action the State of Nevada will take after the contract with Williams is canceled, as is prayed for and as is decreed in this action. The State of Nevada, as soon as it is free from this contract with Williams by the adjudication of the court, will do what in right and justice it ought to do, and no one can suggest that it will do otherwise. Right and justice require the return of the "Clear List" to

the United States Land Department for correction as soon as the contract with Williams is out of the way. The State of Nevada will undoubtedly take such action if the decision of the circuit court is affirmed.

II.

Appellant had no right to seek this land through a State selection.

The conveyance by appellant to the New Philadelphia Silver Mining Company was made July 26, 1879.

Before April, 1880, expensive buildings had been constructed upon the land by the purchaser.

April 15, 1880 (Rec., p. 252), the Secretary of the Interior decided that desert-land claims are not assignable.

Previous to that date, and at the time of said conveyance, it was the practice of the Land Office, well known to the public, to permit such assignments.

Consequently it appears that the maneuver of Williams to cancel the desert-land entry No. 158, and reacquire under a State selection the land that he had sold, was based upon a change made in the holding of the Interior Department between the dates of the conveyance and the relinquishment.

It will be remembered also, that the act of Congress (21 Stats., 287) granting the 2,000,000 acres to Nevada was not passed until June 16, 1880, at which date the grantees were in full possession and had constructed, within Williams' daily observation, the extensive improvements.

Section 2 of said act provides that:

> The lands herein granted shall be selected by the State authorities of said State from any unappropriated non-mineral, public land in said State. * * *

The Department Circular of October 26, 1880 (Rec., p. 205), says:

> The act requires the selection to be made from any unappropriated non-mineral public land in said State in quantities not less than the smallest legal subdivision.

and also says:

> No selection is admissible upon any land to which a preëmption or other valid claim shall be legally established, nor on any land which is or may be reserved from sale by any law of Congress or proclamation of the President of the United States, nor upon any tract which is reserved or withdrawn from market for any purpose whatever excepting lands which have been withdrawn or returned by the surveyor-general as mineral in character.

It would be clearly offensive to the moral sense to say that Williams could have seized, as preëmptioner, homesteader, or settler, upon land conveyed, built upon, and occupied, as is shown in this case. It is equally offensive to say that he is entitled to acquire this land and the improvements thereon, as the applicant for, and the moving party to procure, a State selection of the land for his benefit, under the existing circumstances. So far as the appellant is concerned, the land was neither unappropriated land nor public land.

Neither was the fact otherwise as to the State. It will also be kept in mind that the land in controversy was, from May 19, 1879, until August, 188[illegible] appropriated land under the desert-land entry.

It is respectfully submitted, as the gra[illegible] under the 2,000,000-acre act is in terms a grant *in p*[illegible], that land held under a desert-land entry, and occu[illegible] under a claim of ownership, and having upon it a quartz mill characterizing it as a mill site, does not constructively, or upon the happening of any subsequent occurrence, pass to the State.

The purchasers from Williams are plainly his equitable successors as to the rights of occupation and preference recognized by law as inhering in those settling upon and improving unsurveyed lands.

In seeking to acquire the land under the State location, Williams attacks the preferential rights of the original settler and his successors, and his action is antagonistic to the principle stated in *Lamb* v. *Davenport*, 18 Wall., 307, (314); *Atherton* v. *Fowler*, 96 U. S., 513 (518, 519); *Nickals* v. *Winn*, 17 Nev., 188; and *Rector* v. *Gibbon*, 111 U. S., 276 (284–87)—that it is in accordance with the policy of Congress and with the decisions of the courts to protect early settlers and improvers of the public lands, and give them the right of preference in purchase and priority of privilege in securing title when the time arrives that title can be obtained.

III.

As to the five acre mill site, the occupants held the rights of possession and acquirement of title which could not be taken from them without their consent.

When the desert-land entry was canceled Matthiessen and Ward were in possession and with a quartz mill erected on the premises, and were clothed with all rights and privileges recognized by law as pertaining to such occupation and improvement.

It is asserted with great confidence that such possession and the existence of the quartz mill there, vested them upon the instant of the cancellation, with the initiatory rights of retaining possession and of taking the statutory steps at their reasonable convenience to receive a patent for five acres of the land as a mill site; and that beyond question, as to such five acres, the right of State selection never existed.

The statutory authority for acquiring a mill site is set forth in Regulation 71 of the Interior Department (Rec. p. 188) as follows:

MILL SITES.

> 71. Section 2337 provides that "where non-mineral land not contiguous to the vein or lode is used or occupied by the proprietor of such vein or lode for mining or milling purposes, such nonadjacent surface ground may be embraced and included in an application for a patent for such vein or lode, and the same may be patented therewith, subject to the same preliminary requirements as to survey and notice

as are applicable to veins or lodes; but no location hereafter made of such nonadjacent land shall exceed five acres, and payment for the same must be made at the same rate as fixed by this chapter for the superficies of the lode. The owner of a quartz mill or reduction works, not owning a mine in connection therewith, may also receive a patent for his mill site, as provided in this section."

The regulations also provide:

In making the entry no separate receipt or certificate need be issued for the mill site, but the whole area of both lode and mill site will be embraced in one entry, the price being five dollars for each acre and fractional part of an acre embraced by such lode and mill-site claim.

74. In case the owner of a quartz mill or reduction works is not the owner or claimant of a vein or lode the law permits him to make application therefor in the same manner prescribed herein for mining claims, and after due notice and proceedings, in the absence of a valid adverse filing, to enter and receive a patent for his mill site at said price per acre.

75. * * * The law expressly limits the mill-site locations made from and after its passage to five acres.

Under this legal authorization the occupants of the property, January 8, 1883, duly made and filed in the local land office their application for a patent for 5 acres of the land covered by and surrounding their quartz mill.

This application was rejected by the register and receiver upon the ground that the land was contained in

State selection, list 24. Appeal was duly taken from this decision to the Commissioner of the General Land Office January 10, and the papers were received by him January 18. The conflict produced by this application and appeal was noted in pencil on list 24 (as is more fully shown by the preceding statement of facts), and the mill-site application rested in Division N, and list 24 in Division G until after the erasure complained of.

The practice of the Land Office as to appeals as now formulated in Rule 43 (see vol. 4, Land Decisions, p. 35) is as follows:

> Appeals from the final action or decisions of registers and receivers lie in every case to the Commissioner of the General Land Office. (Revised Statutes, sections 453, 2478.)

It therefore appears that under the law of the land and under the practice of the Department of the Government the mill site applicants were authorized and regular.

It is clearly the duty of the United States to remove the injurious consequences to which the applicants, without fault of their own, have become subjected by the occurring of the erasure in the Governmental department. It is for the officers of the Department and not for the courts to determine the rights of the applicants under the appeal, and it is the duty of the United States to see to it that these applicants are not defrauded of their hearing and of a decision of their appeal, by frauds perpetrated, or by accidents which are permitted to happen in its Departments.

IV.

Assuming that a State may be sued by the United States without its consent, and that Nevada might have been made a party defendant in some form of action, it is not a necessary party in this suit to relieve the proceedings of a Department of the Government from the effects of a fraud in which the State had no part.

Although the State might have been made a party in some form of suit or proceeding to remove the effect of the erroneous certification, it yet remains true that in the case at bar the United States has the right to bring this suit against Williams, and the court has jurisdiction to determine his rights in the premises.

The relief prayed for against Williams is not needed as against the State. The State is free from blame, and the United States is to be justified in relying upon her performing her duty when relieved from the claims of Williams, without coupling the sovereignty with an accused individual and asking a judgment to compel the State to perform that duty.

The State is not the real party in interest. There is no suggestion that the State sought this land for any use or any specific or general purposes of its own.

Williams was the moving party; his application induced the State to act.

The State made the selection in his interest; it was simply the conduit through which the title was to pass. The whole proceeding was simply a means of transferring the land from the United States to Williams.

State selection, list 24. Appeal was duly taken from this decision to the Commissioner of the General Land Office January 10, and the papers were received by him January 18. The conflict produced by this application and appeal was noted in pencil on list 24 (as is more fully shown by the preceding statement of facts), and the mill-site application rested in Division N, and list 24 in Division G until after the erasure complained of.

The practice of the Land Office as to appeals as now formulated in Rule 43 (see vol. 4, Land Decisions, p. 35) is as follows:

> Appeals from the final action or decisions of registers and receivers lie in every case to the Commissioner of the General Land Office. (Revised Statutes, sections 453, 2478.)

It therefore appears that under the law of the land and under the practice of the Department of the Government the mill site applicants were authorized and regular.

It is clearly the duty of the United States to remove the injurious consequences to which the applicants, without fault of their own, have become subjected by the occurring of the erasure in the Governmental department. It is for the officers of the Department and not for the courts to determine the rights of the applicants under the appeal, and it is the duty of the United States to see to it that these applicants are not defrauded of their hearing and of a decision of their appeal, by frauds perpetrated, or by accidents which are permitted to happen in its Departments.

IV.

Assuming that a State may be sued by the United States without its consent, and that Nevada might have been made a party defendant in some form of action, it is not a necessary party in this suit to relieve the proceedings of a Department of the Government from the effects of a fraud in which the State had no part.

Although the State might have been made a party in some form of suit or proceeding to remove the effect of the erroneous certification, it yet remains true that in the case at bar the United States has the right to bring this suit against Williams, and the court has jurisdiction to determine his rights in the premises.

The relief prayed for against Williams is not needed as against the State. The State is free from blame, and the United States is to be justified in relying upon her performing her duty when relieved from the claims of Williams, without coupling the sovereignty with an accused individual and asking a judgment to compel the State to perform that duty.

The State is not the real party in interest. There is no suggestion that the State sought this land for any use or any specific or general purposes of its own.

Williams was the moving party; his application induced the State to act.

The State made the selection in his interest; it was simply the conduit through which the title was to pass. The whole proceeding was simply a means of transferring the land from the United States to Williams.

At the point of the discovery of the wrong Williams telegraphs to the Governor: "Have deed for my State land claim executed immediately." * * * "Don't delay."

The State declines, in the interest of Williams, to return the false certification. He obtains and holds the contract, and seeks a full title; Williams is the beginning and the end of the entire proceeding.

It is presumptuous for him now to attempt to use the State as a shield between himself and the United States.

Admitting that the certification made secured to Williams the same rights and privileges he would have acquired had a patent been executed and delivered under restrictions and circumstances similar to those surrounding the certification, still the injured party may disregard the intermediary and proceed directly to the principal.

It is the right and duty of the United States to initiate and prosecute a suit "of a civil nature and of equitable cognizance" to render null and void any grant or conveyance issued by the United States and procured by fraud, or issued unadvisedly or by mistake, or where the officer has no authority to make the same, or where another party has a higher equity and should have received the conveyance.

And it has this authority not only where it has a pecuniary interest, in the remedy sought, but also when it is under obligation to a party who will be benefited by an action sustained for his use, and also where it appears that any obligation exists on the part of the United States to the public or to any individual.

V.

It is now settled law that the United States has the right to initiate and maintain a suit of the nature of the one at bar.

In the case of the *United States* v. *San Jacinto Tin Co.*, 125 U. S., 279, the doctrine is clearly stated:

> If the United States in any particular case has a just cause for calling upon the judiciary of the country in any of its courts, for relief by setting aside or annulling any of its contracts, its obligations, or its most solemn instruments, the question of the appeal to the judicial tribunals of the country must primarily be decided by the Attorney-General of the United States. That such a power should exist somewhere, and that the United States should not be more helpless in relieving itself from frauds, impostures, and deceptions than private individuals, is hardly open to argument.
>
> The Constitution itself declares that the judicial power shall extend to all cases to which the United States shall be a party, and that this means mainly where it is a party plaintiff is a necessary result of the well established proposition that it can not be sued in any court without its consent. * * * The attorneys of the United States in every judicial district are officers of this character, and they are by statute under the immediate supervision and control of the Attorney-General. How, then, can it be argued that if the United States has been deceived, trapped or defrauded into the making, under the forms of law, of an instrument which injuriously affects its rights of property, or other rights, it can not bring a suit to avoid the effect of such instrument, thus fraudulently obtained without a special act of

> Congress in each case, or without some special authority applicable to this class of cases, while all other just grounds of suing in a court of justice concededly belong to the Department of Justice, and are in use every day?

The reasoning in the above case and the authorities cited therein show that the United States has a right to bring such an action as this, because it is an action by the Government to prevent the use of its grant where the grant has been obtained by fraud of the defendant and by the mistake of the officers of the Government. In the present case the United States owes a duty to the public to prevent frauds upon it from being successful. It also owes a duty to the applicant for the mill site and the owners of the improvements thereon. It also has material interests of its own, because of the money to which it would be entitled if it granted the mill-site application.

The authority of the Attorney-General to initiate and maintain a suit of this nature is declared in *United States* v. *Beebe*, 127 U. S. R., 338 (342), in which the court say:

> The authority of the Attorney-General under the Constitution and laws of the United States to institute a suit in the name of the United States to set aside a patent alleged to have been obtained by fraud or other mistake, whenever denied by a specific pleading before this court, has been uniformly maintained. States can properly proceed by bill in equity to have a And it may now be accepted as settled that the United judicial decree of nullity and an order of cancellation of a *patent issued in mistake or obtained by fraud where the Government has a direct interest or is under an obligation respecting the relief invoked.*

And the same doctrine is stated in *In re Nagle* (135 U. S. R.) by the court (pp. 66–71) and is assented to in the dissenting opinion (pp. 85, 86).

The case of the *United States* vs. *Bell Telephone Company*, (128 U. S., 315) involving interests of very great importance, and decided upon very elaborate argument, in itself, and in the cases cited and approved in the opinion announced, establishes so clearly the right of the appellee to maintain a suit of the nature of the one at bar that further or renewed argument upon that point is scarcely permissible.

After commenting on the English cases bearing upon the question, the court say (pp. 364–368.):

> This subject has been frequently discussed in this court, and the principles necessary to its decision have been well established. The case of *United States* v. *Stone*, (2 Wall., 525) was a bill in chancery brought by the United States, in the circuit court for the district of Kansas, to set aside a patent issued by the Government to Stone, the defendant. The question of the jurisdiction of the court to entertain such a bill, which was denied by counsel for Stone, was discussed at considerable length in their brief, and in the argument of counsel for the United States the language of Chief Justice Kent, in *Jackson* v. *Lawton*, (10 Johns, 24) was cited to the following effect: "The English practice of suing out a *scire facias* by the first patentee may have grown out of the rights of the prerogative, and it ceases to be applicable with us. In addition to the remedy by *scire facias*, etc., there is another by bill in the equity side of the court of chancery. Such a bill was sustained in the case of *The Attorney General* v. *Vernon*, (1 Vernon, 277) to set aside letters patent obtained by fraud, and they were set aside by a decree."

This extract from the brief of counsel in the Stone case is cited to show that the attention of the court was turned to this question, and the language of the opinion as delivered by Mr. Justice Grier, expresses in sententious terms the result arrived at by this court in regard to this entire question. It is as follows: "A patent is the highest evidence of title, and is conclusive as against the Government, and all claiming under junior patents or titles, until it is set aside or annulled by some judicial tribunal. In England this was originally done by *scire facias*, but a bill in chancery is found a more convenient remedy. Nor is fraud in the patentee the only ground upon which a bill will be sustained. Patents are sometimes issued unadvisedly or by mistake, where the officer has no authority in law to grant them, or where another party has a higher equity and should have received the patent. In such cases courts of law will pronounce them void. The patent is but evidence of a grant, and the officer who issues it acts ministerially and not judicially. If he issues a patent for land reserved from sale by law, such patent is void for want of authority. But one officer of the Land Office is not competent to cancel or annul the act of his predecessor. That is a judicial act and requires the judgment of a court. It is contended here by the counsel of the United States that the land for which a patent was granted to the appellant was reserved from sale for the use of the Government and, consequently, that the patent is void. And although no fraud is charged in the bill, we have no doubt that such a proceeding in chancery is the proper remedy and that if the allegations of the bill are supported, the decree of the court below canceling the patent should be affirmed (p. 535)."

We cite thus fully from this case because it is the first one in which the questions now before us were

fully considered and clearly decided. In the previous case of *United States* vs. *Hughes* (11 How., 552) the same question came before the court on demurrer. The court held that the demurrer must be overruled, saying that it can not "be conceived why the Government should stand on a different footing from any other proprietor." The case afterwards came again before this court, and is reported in 4 Wall, 232, later than the Stone case. The court then said: "It was the plain duty of the United States to seek to vacate and annul the instrument to the end that their previous engagement might be fulfilled by the transfer of a clear title, the only one intended for the purchaser by the act of Congress." (*United States* v. *Hughes*, 4 Wall., 232, 236.)

In the case of *Moore* v. *Robbins* (96 U. S. R., 530, 533) this court said, in a suit between private citizens, and speaking of the issue of patents by the Government: "If fraud, mistake, error, or wrong has been done, the courts of justice present the only remedy. These courts are as open to the United States to sue for the cancellation of the deed or reconveyance of the lands as to individuals, and if the Government is the party injured this is the proper course."

In *Moffat* v. *United States* (112 U. S. R., 24) a decree of the circuit court setting aside a patent as having been obtained by fraud was affirmed, and the same doctrine was reasserted in *United States* v. *Minor* (114 U. S. R., 233). Still later, in the case of *Colorado Coal and Iron Co.* v. *United States* (123 U. S. R., 307), the right of the court, by a proceeding in equity at the instance of the Attorney-General and in the name of the United States, to set aside a patent for land was fully recognized, and the language used in the case of *United States* v. *Minor*, *supra*, was cited to the

following effect: "Where the patent is the result of nothing but fraud and perjury, it is enough to hold that it conveys the legal title, and it would be going quite too far to say that it can not be assailed by a proceeding in equity and set aside as void if the fraud is proved and there are no innocent holders for value" (p. 243).

The whole question was reviewed at great length by this court at its last term in the case of *United States* v. *San Jacinto Tin Company* (125 U. S., 273), when all the cases above mentioned, and others, were cited and commented upon. The matter is thus summed up in the opinion of the court: "But we are of opinion that since the right of the Government of the United States to institute such a suit depends upon the same general principles which would authorize a private citizen to apply to a court of justice for relief against an instrument obtained from him by fraud or deceit, or any of those other practices which are admitted to justify a court in granting relief, the Government must show that, like the private individual, it has such an interest in the relief sought as entitled it to move in the matter. If it be a question of property, a case must be made in which the court can afford a remedy in regard to that property; if it be a question of fraud, which would render the instrument void, the fraud must operate to the prejudice of the United States; and if it is apparent that the suit is brought for the benefit of some third party, and that the United States has no pecuniary interest in the remedy sought, and is under no obligation to the party who will be benefited to sustain an action for his use; in short, if there does not appear any obligations on the part of the United States to the public, or to any individual, or any interest of its own, it can no more sustain such an

action than any private person could under similar circumstances" (pp. 285, 286).

This language is construed by counsel for the appellee in this case to limit the relief granted at the instance of the United States to cases in which it has a direct pecuniary interest. But it is not susceptible of such construction. It was evidently in the mind of the court that the case before it was one where the property right to the land in controversy was the matter of importance, but it was careful to say that the cases in which the instrumentality of the court can not thus be used are those where the United States has no pecuniary interest in the remedy sought, and is also under no obligation to the party who will be benefited to sustain an action for his use, and also where it does not appear that any obligation existed on the part of the United States to the public or to any individual. The essence of the right of the United States to interfere in the present case is its obligation to protect the public from the monopoly of the patent which was procured by fraud, and it would be difficult to find language more aptly used to include this in the class of cases which are not excluded from the jurisdiction of the court by want of interest in the Government of the United States.

It is insisted that these decisions have reference exclusively to patents for land, and that they are not applicable to patents for inventions and discoveries. The argument very largely urged for that view is the one just stated, that in the cases which had reference to patents for land the pecuniary interest of the United States was the foundation of the jurisdiction. This, however, is repelled by the language just cited, and by the fact that in more than one of the cases, notably in *United States* v. *Hughes*, *supra*, the right of the Government to sustain the suit was based upon its

> legal or moral obligation to give a good title to another party who had a prior and a better claim to the land, but whose right was obstructed by the patent issued by the United States.

The later case of *United States* v. *Iron Silver Mining Company*, 128 U. S., 673 (676), declares that——

> The Government has the same right to demand the cancellation of the conveyances of the United States when obtained by false and fraudulent representations as a private individual when a conveyance of his lands is obtained in like manner. In this respect the United States, as a landed proprietor, stand upon the same footing with a private citizen.

It is respectfully submitted that the decree of the circuit court should be affirmed.

A. X. PARKER,
Assistant Attorney-General.

APPENDIX.

BRIEF SUBMITTED BY MESSRS. ABBETT & FULLER ON BEHALF OF THE APPLICANTS FOR THE "MILL SITE."

THE SUPREME COURT OF THE UNITED STATES.

JOSEPH T. WILLIAMS, APPELLANT,
vs.
THE UNITED STATES, APPELLEE.

This is a suit in equity, brought by the United States against Joseph T. Williams in the circuit court of the United States, ninth circuit and district of Nevada.

This suit is brought by direction of the Attorney-General, as appears by the bill of complaint (p. 1 printed transcript of record) and by the amended bill of complaint (p. 28).

The statement of facts will be found in the brief of the Attorney-General.

POINTS.

I.

The State of Nevada refused to return the "clear list," which included the 160 acres of land applied for by Williams, because it had made a contract with Williams, and it did not deem it proper to determine the question as against Williams, in view of this contract. The State,

therefore, took the position that it would give a patent to Williams, unless the United States should take proceedings to have the matter determined in the courts in a proper controversy with Williams. The State took the position of being entirely indifferent in the controversy, leaving the question to be decided in the courts.

The State of Nevada was entitled to have certified to it a certain number of acres of land under the act of June 16, 1880, and under its laws the State of Nevada periodically asked to have lands certified where an application was made by some one under the act of May 5, 1873.

In the present case Williams had applied to the State, under the act of 1873, asking it to make application to the United States for the certification of these 160 acres of land to the State, so that the State could sell it to him under the act of 1873, and the State at his request had made the application. It was of no interest to the State, because, if this particular tract of 160 acres had not been granted to it the State would have been entitled to another 160 acres and would have received from some one else the same price therefor as was to be paid by Williams for this tract.

The State of Nevada is waiting for the final disposition of this case. If the determination of the circuit court as to the fraud and as to the imposition upon the United States Government is upheld, there can be no doubt as to what action the State of Nevada will take after the contract with Williams is canceled, as is prayed for and as is decreed in this action. The State of Nevada, as soon as it is free from this contract with Williams by the adjudication of the court, will do what in right and justice it ought to do, and no one can suggest that it will do otherwise. Right and justice require the return of the "clear list" to the United States Land Department for correction as soon as the contract with Williams is out of the way. The State of Nevada will undoubtedly take such action if the decision of the circuit court is affirmed.

II.

The United States has an interest in this controversy.

First. In its relation to the public, to prevent imposition upon it by fraud.

Second. Because it would be entitled to $5 an acre for this mill site, and, therefore, it has a pecuniary interest as well as a moral interest in the controversy.

Third. Because there is no other legal or equitable mode of obtaining relief than the one adopted in this case.

If it is alleged by the other side that Matthiessen and Ward could claim under Williams's deed in a controversy between them, the answer is that deed does not embrace all of the mill site, and also that Williams had given a prior deed to Campbell, which embraced the whole of this mill site in question, as shown by Exhibit M, page 334, printed transcript of record.

III.

The defendant in this case contends that the United States has no jurisdiction so as to enable it to bring this action.

This action is in substance a judicial proceeding by the United States to prevent the defendant from acquiring a title to land through the State of Nevada by proceedings which the United States claim were void, either through mistake or by the fraud of the defendant.

It is contended by the defendant that if any suit could have been brought it ought to have been one against the State of Nevada to cancel the certification of the lands, as the State itself was interested in the entire certification, not only of the lands in question but of other lands mentioned in the "Clear list."

The answer to the above contention is:

I. That the United States has the right to attack as against the defendant any proceeding under which he would obtain title through fraud against the United

States; that the United States has the same right that an individual would have to attack fraud and prevent any one benefiting thereby.

II. That while the certification was to the State, the certification was based upon the application of the defendant, whose fraud, we claim, can be successfully attacked by the United States. The action of the State of Nevada was for the purpose of vesting the title in the defendant under a contract between him and the State. The real party in interest, therefore, was the defendant and not the State of Nevada.

III. That if the defendant can not be attacked in this way there is grave doubt as to whether there is any mode by which such fraud can be successfully attacked by the United States, because it is a grave question whether the United States Government can sue a State for the purpose of canceling this portion of the "clear list" in which the defendant is interested; these doubts arise under the provisions of the Constitution of the United States as to the right of the United States to sue a State in such a case as this.

IV. That the State of Nevada would have the power, with the permission of the court, to intervene in a suit of the United States against the defendant so as to support the validity of the certification and oppose the attempt of the United States to have it declared void as against the defendant, who claims under a contract with the State of Nevada. This intervention, where the State is not a party defendant, is in the discretion of the State, and without such action the State is not heard.

V. That the United States was a necessary party plaintiff in this proceeding.

IV.

The United States has a right to attack, as against the defendant, any proceeding under which he would obtain title through fraud against the United States, the same as

an individual would have a right to attack fraud which affected his rights.

In the case of *The United States* v. *San Jacinto Tin Company* (125 U. S. R., 279) the doctrine is clearly stated.

> If the United States in any particular case has a just cause for calling upon the judiciary of the country in any of its courts for relief by setting aside or annulling any of its contracts, its obligations, or its most solemn instruments, the question of the appeal to the judicial tribunals of the country must primarily be decided by the Attorney-General of the United States. That such a power should exist somewhere, and that the United States should not be more helpless in relieving itself from frauds, impostures, and deceptions than private individuals is hardly open to argument. The Constitution itself declares that the judicial power shall extend to all cases to which the United States shall be a party, and that this means mainly where it is a party plaintiff is a necessary result of the well-established proposition that it can not be sued in any court without its consent. * * *
>
> The attorneys of the United States in every judicial district are officers of this character and they are by statute under the immediate supervision and control of the Attorney-General. How, then, can it be argued that if the United States has been deceived, trapped, or defrauded into the making, under the forms of law, of an instrument which injuriously affects its rights of property, or other rights, it can not bring a suit to avoid the effect of such instrument, thus fraudulently obtained, without a special act of Congress in each case or without some special authority applicable to this class of cases, while all other just grounds of suing in a court of justice concededly belong to the Department of Justice, and are in use every day?

At page 282 the court further says:

> If fraud, mistake, error, or wrong has been done the courts of justice present the only remedy. These courts are open to the United States to sue for the cancellation of the deed or reconveyance of the land as to individuals; and if the Government is the party injured this is the proper course.

At page 284 the court also says:

> Where the patent is the result of nothing but fraud and perjury it is enough to hold that it conveys the legal title, and it would be going quite too far to say that it can not be assailed by a proceeding in equity and set aside as void, if the fraud is proved and there are no innocent holders for value.

And at pages 284 and 285 the court also says:

> We do not think, therefore, that it can be successfully denied that there exists in the Attorney-General, as the head of the Department of Justice, the right to institute, in the name of the United States, a suit to abrogate, annul, or set aside a patent for land which has been issued by the Government in a case where such an instrument, if permitted to stand, would work serious injury to the United States and prejudice its interests, and where it has been obtained by fraud, imposture, or mistake.

And at page 285 the court says:

> But we are of opinion that since the right of the Government of the United States to institute such a suit depends upon the same general principles which would authorize a private citizen to apply to a court of justice for relief against an instrument obtained from him by fraud or deceit, or any of those other practices which are admitted to justify a court in granting relief, the Government must show that, like the private individual, it has such an interest in

> the relief sought as to entitle it to move in the matter. If it be a question of property, a case must be made in which the court can afford a remedy in regard to that property; if it be a question of fraud, which would render the instrument void, the fraud must operate to the prejudice of the United States; and if it is apparent that the suit is brought for the benefit of some third party, and that the United States has no pecuniary interest in the remedy sought and is under no obligation to the party who will be benefited to sustain an action for his use; in short if there does not appear any *obligation on the part of the United States to the public, or to any individual, or any interest of its own*, it can no more sustain such an action than any private person could under similar circumstances.

The reasoning in the above case and the authorities cited therein show that the United States has a right to bring such an action as this, because it is an action by the Government to prevent the use of its grant where the grant has been obtained by fraud of the defendant and by the mistake of the officers of the Government. In the present case the United States owes a duty to the public to prevent frauds upon it from being successful. It also owes a duty to the applicant for the mill site and the owners of the improvements thereon. It also has material interests of its own, because of the money to which it would be entitled if it granted the mill-site application.

V.

While the certification of the land in question was to the State, it was based upon the application of the defendant, whose fraud, we claim, can be successfully attacked by the United States. The action of the State of Nevada was for the purpose of vesting the title in the defendant,

under a contract between him and the State. Therefore, the real party in interest was the defendant, and not the State of Nevada.

The evidence in this case shows that the State of Nevada was moved to ask that these lands be certified to it because the defendant desired to acquire them. The real party, therefore, so far as regards the lands in question in this suit was the defendant, who alone was to be benefited by this certification, which was brought about by his fraud. The whole scope of the scheme was as follows:

The defendant asked the State of Nevada to apply to the United States Government to have the land certified, so that he could purchase it from the State. The State, according to custom and its statutes, asked for such certification. The United States Government certified it to the State to enable it to sell the land to the defendant. The defendant made a contract with the State by which he was to get the land. His fraudulent action brought about the certification of the land to the State, when otherwise the United States would not have made such certification. It was imposed upon by the fraud of the defendant.

Whether the United States can or can not attack the State directly, will any one claim that it is powerless to attack the defendant and prevent him from reaping the fruits of his fraud? He is the real party in interest. The State of Nevada was simply one of the instruments which he proposed to use to render his fraud successful.

VI.

That if the defendant can not be attacked in this way there is grave doubt as to the mode by which the fraud can be successfully attacked by the United States, because it is a grave question whether the United States Government can, under the Constitution, sue a State for the purpose of canceling such a grant as is effected by the operation of the "clear list."

If the defendant can not be attacked in this way is there any remedy? If this had been a grant made directly to the defendant there is a long line of cases which hold that such an action is proper, and it is no longer an open question as to the power of the United States to attack its grant in a court of justice when it has been obtained by fraud. The different questions arising in such cases will be found in the following decisions:

United States v. *Minor* (114 U. S., 233).
Mullen v. *United States* (118 U. S., 271).
United States v. *San Jacinto Tin Co.* (121 U. S., 273).
Maxwell Land Grant Case (121 U. S., 325).
Colorado Coal Co. v. *United States* (123 U. S., 307).
United States v. *Bebee* (127 U. S., 338).

In this case the conveyance is to come through the State of Nevada. If the State of Nevada can not be sued by the United States to cancel this grant, or there is no case against the State which could be maintained (because the State was an entirely innocent party and would have been entitled to the certification any way), then the defendant's fraud must be successful unless this suit can be maintained.

There was pending before the United States at the time the certification was made an application for five acres of the land in question as a mill site. The defendant knew this at the time. By the erasure in the record of the memorandum of this application the certification passed the grant of the land in question to the State of Nevada.

The question between the United States and the State of Nevada is left to the two sovereignties to determine by their own action. The Constitution of the United States, it is submitted, did not contemplate a condition of things in which the judicial power of the Government was to be invoked by the United States to compel a State to vacate a grant made to it. It was believed to be safe to intrust

the proper action in such a case, to the honesty and fairness of the sovereign State. The unseemly contest between the two sovereignties by direct action of the one against the other, seems to have been purposely unprovided for in the grant of powers to the United States by the Constitution.

The grant of judicial power to the United States by the Constitution is contained in Article III of the Constitution. Section 2 of that article says:

> The judicial power shall extend to all cases in law and equity arising under this Constitution, the laws of the United States, and treaties made, or which shall be made, under their authority; to all cases affecting ambassadors, other public ministers and consuls; to all cases of admiralty and maritime jurisdiction; to controversies to which the United States shall be a party; to controversies between two or more States; between a State and citizens of another State; between citizens of different States; between citizens of the same State claiming lands under grants of different States, and between a State, or the citizens thereof, and foreign states, citizens or subjects.

This section, so far as the States are concerned, seems to confine the grant of power to the following cases:

First. Controversies between two or more States;

Second. Controversies between a State and citizens of another State;

Third. Controversies between a State and foreign states.

It is true that it says that the judicial power shall extend to all controversies to which the United States shall be a party, but this can not be construed as a grant of power to sue a State directly. It simply gives a judicial power to the United States in cases where the United States is a party, but it does not state that the United States can make a State a party to a suit brought by it.

The statement of the cases in which a State can be brought into the United States courts seems to exclude the idea that any State can be brought into such a tribunal except as enumerated in section 2 of Article III.

It has been distinctly held that the United States can not be sued without its consent.

The court, in *McElrath* v. *United States* (102 U. S., 440), says:

> The Government can not be sued except with its own consent.

And, further, on the same page, speaking of suits against it in the Court of Claims, it says:

> If a claimant avail himself of the privilege thus granted he must do so subject to the conditions of the Government annexed to the privilege. Nothing more need be said on this subject.

The doctrine is again stated in *Kendall* v. *United States*, 107 U. S., 125; and in *Florida* v. *Georgia*, 17 How. (U. S.), 478, etc.

The right to sue a State in any case, *without its consent*, was considered as early as 1793, in the leading case of *Chisholm, executor*, v. *Georgia* (2 Dallas, 419).

IREDELL, *J.*, says, as to an action lying against the State, page 430:

> If it will, it must be in virtue of the Constitution of the United States, or of some law of Congress conformable theroto.

And on page 431:

> The Constitution is particular in expressing the *parties who may be the objects of the jurisdiction* in any of *these* cases. * * *

From that time to the present the United States courts have uniformly held that a State can not be made a party

without its consent, unless it comes within some of the provisions of the Constitution granting power to the United States.

VII.

The State of Nevada would have the power, with permission of the court, to intervene in a suit of the United States against the defendant so as to support the validity of the certification and oppose the attempt of the United States to have it declared void as against the defendant, who claims under a contract with the State of Nevada. This intervention is within the discretion of the State, and without such action the State is not heard in such suit.

Any sovereignty, either the United States or any particular State, may intervene without becoming a party to a suit in the legal sense of the term. It may present evidence and be heard in argument, and the court will not hold the intervening party as either plaintiff or defendant. It will not hold that they are liable to a judgment against them, or entitled to a judgment in their favor, but the court may thus be placed in possession of facts and arguments which will affect the rights of the State.

The right to intervene and the effect of it, so far as the United States is concerned, is laid down in the case of *Florida* v. *Georgia*, 17 How. (U. S.), 478, etc.

The right to be heard without being a party to the suit depends upon the will of the sovereign. If a sovereign applies, it has been held, as to the United States, that the sovereign will be heard. The United States as a sovereign will not be made a party to a suit where two States have a controversy, but it will be permitted to produce evidence and to be heard in argument, so as to present its views.

If an individual instead of a sovereign was interested, such individual would be made a party to the suit, but being a sovereign it is not made a party, because it can not be made such party without its consent.

The doctrine upon which the case of *Florida* v. *Georgia* rests is the fundamental principle that the United States, being a sovereign, can not be sued without its consent, but that if it has rights and interests or rights and interests of its citizens to be affected it has a right to intervene.

The same doctrine and the same principles apply to a State as a sovereign, and a State can not be sued without its consent any more than the United States, unless it has consented thereto by the Constitution of the United States or by some statute or act of the State itself. The State as a sovereign can never be injured, although it is not a party to a suit, because it always has the right to intervene just the same as the United States intervened in 1864 in the case of *Florida* v. *Georgia*.

No harm or injury was done to the State of Nevada in this case, because she did not intervene. She exercised her sovereign discretion when she did not ask to be heard. That discretion in all probability was so exercised because she deemed it a controversy in which she left it to the defendant (who was attacked for fraudulent acts done by him) to defend himself. The State of Nevada did not desire to interpose in a judicial proceeding the contention that notwithstanding there was fraud perpetrated by defendant, yet she would intervene in order that he might enjoy the fruits of that fraud. His fraud ended any legal or equitable claim he might have in regard to this land, so far as the State of Nevada was concerned, or so far as the United States was concerned. The defendant was not an innocent purchaser. He had knowledge, nay, more, he was an actor in the fraud.

VIII.

The United States was a necessary party plaintiff in this proceeding.

This suit could not have been maintained by any one except the United States. No one could indirectly attack

the proceedings. The United States, under act of Congress, had the right to grant sections of public land, including the land in question, to the State of Nevada. The United States also had the right to grant the mill site under the act of Congress. It was considering both questions. Under its rules no grant would be made to the State until it had decided the question of the application for the mill site, which was a part of the land asked to be certified.

Under the circumstances set forth in this case the United States made a grant to the State of Nevada at the instance of the defendant, under which a contract was made by the State with Williams, so that he was to get the land in question, although he knew all the time that there was an application for a mill site pending for a part of the land. The State of Nevada being an innocent party and having the grant, and having made a contract to sell the land to the defendant for a stipulated price, was merely an innocent instrument through whom the defendant hoped to consummate his fraud. In the chain of title under which the defendant claims the land, is this certification to the State. No one save the United States can be allowed to attack this certification. That Government alone is entitled to claim that it was issued through fraud or through mistake and should be set aside, or the parties enjoined from using it. We submit that the United States Government could not sue the State of Nevada, because the State had not consented to be sued, and had not surrendered to the United States by the Constitution any power to sue it directly.

Even if this doctrine is not sound and the United States could sue the State of Nevada, it would be no reason why it should not sue the defendant separately also, and enjoin him from using this certification to acquire this land fraudulently. It would be eminently proper for the sovereignty of the United States in every case to refrain from suing a State, even if it had the power, when it could

reach the result by suit against the individual. The proper relation of the United States to the State would always suggest a refusal to bring such a suit unless, it was a case of absolute necessity, in order to maintain some great principle of right, which could not be presented in any other way.

IX.

The United States has a right to bring this suit against Williams in the circuit court of the United States, district of Nevada.

Under section 2 of Article III of the Constitution, and under the act of Congress approved March 3, 1875, entitled "An act to determine the jurisdiction of circuit courts of the United States and to regulate the removal of causes from State courts, and for other purposes," the United States had this right.

That act provides that the

> Circuit courts of the United States shall have original cognizance with the courts of the several States of all suits of a civil nature at common law or in equity where * * * the United States are plaintiffs, or in which there shall be a controversy between citizens of different States. * * *

The United States, if it can sue a State, must bring the action in the Supreme Court of the United States. It could only sue Williams in the circuit court. How could it join the State and Williams in the same suit? If the United States is to be restricted to a suit against the State, it is an indirect mode of attacking the fraud of Williams. Is it not the best and wisest policy to attack Williams directly in a suit against him to make his fraud useless, to injure the rights of any one, rather than seek to attack him indirectly through the State of Nevada?

X.

The deed procured by fraud works no estoppel, nor does a deed granted in contravention of the statute work an estoppel.

This doctrine is laid down in *Bigelow on Estoppel* (2d ed., pp. 254, 255), and cases there cited.

The same doctrine or principle will apply to the certification of the "Clear list" to the State of Nevada, or to any contract the State may have made with the defendant.

ABBETT & FULLER,
Attorneys for Applicant for "Mill Site."